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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920

No. 235

BARTHOLOMEW SULLIVAN, MARGARET THOLEN, JOHN
MANTIN, ET AL., APPELLANTS,

JANE KIDD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF KANSAS.

FILED SEPTEMBER 12, 1921.

(26,500)

RECORDS OF THE

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(26,888)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 802.

BARTHOLOMEW SULLIVAN, MARGARET THOLEN, JOHN
MARTIN, ET AL., APPELLANTS,

vs.

JANE KIDD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF KANSAS.

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1 In the District Court of the United States, District of Kansas,
First Division.

In Equity.

No. 190-N.

BARTHOLOMEW SULLIVAN and MARGARET THOLEN, Complainants,

vs.

JOHN MARTIN, JOSEPH MARTIN, ANNA MARTIN, NOW KNOWN as
Sister Mary Jerome; Jane Kidd, Sole Devisee and Legatee under
and by Virtue of the Last Will and Testament of Margaret
Ingoldsbey, Deceased; Joseph Hall, James Hall, Ellen Hall, Mary
Hall, William Hall, Gertrude Hall, Winnifred Hall, Thomas
Hall, Bernard J. Martin, Edward F. Martin, Thomas C. Martin,
Patrick H. Martin, Leo R. Martin, J. Vincent Martin, Michael H.
Martin, Rachel I. Martin, Mary A. Standart, Anne F. Martin,
Julia F. Martin, Julia Martin, Guardian of Michael H. Martin and
Julia F. Martin, Minors; Joseph Martin, Administrator of the
Estate of John Martin, and John Martin, the Son of Joseph
Martin, Defendants.

Citation on Appeal.

THE UNITED STATES OF AMERICA, ss:

To Jane Kidd, Greeting:

You are hereby cited and admonished to be and appear at the
Supreme Court of the United States, to be held at the City of Wash-
ington, in the District of Columbia, thirty days from and after this
citation bears date, pursuant to an order allowing an appeal filed and
entered in the office of the Clerk of the District Court of the United
States, District of Kansas, First Division, from a judgment, decree,
holding, signed, filed and entered, on the 19th day of June, 1918, in
that certain suit, being in Equity No. 190-N, wherein Bartholomew

2 Sullivan and Margaret Tholen are complainants and you are
one of the defendants and appellee, to show cause, if any
there be, why the decree rendered against the said appellants,
as is said order, allowing appeal mentioned, should not be corrected
and why justice should not be done to the parties, appellant, in
that behalf.

Witness, the Honorable United States Judge, for the District of
Kansas, this 17th day of September, A. D. 1918.

JOHN C. POLLOCK,

United States Judge for the District of Kansas.

Service of the above Citation is hereby received this 17th day of September, A. D. 1918.

**WARNER, DEAN, McLEOD &
LANGWORTHY,**
Solicitors for Appellee Jane Kidd.

[Endorsed:] No. 190-N. U. S. District Court, District of Kansas. Sullivan et al. vs. Martin et al. Citation on Appeal. Filed Sep. 17, 1918. F. L. Campbell, Clerk, by D. B. White, Deputy.

3 In the District Court of the United States, District of Kansas,
First Division.

In Equity.

No. 190-N.

BARTHOLOMEW SULLIVAN and MARGARET THOLEN, Complainants,
vs.

JOHN MARTIN, JOSEPH MARTIN, ANNA MARTIN, Now Known as Sister Mary Jerome; Jane Kidd, Sole Devisee and Legatee under and by Virtue of the Last Will and Testament of Margaret Ingoldsby, Deceased; Joseph Hall, James Hall, Ellen Hall, Mary Hall, Thomas Hall, Gertrude Hall, Winnifred Hall, William Hall, Bernard J. Martin, Edward F. Martin, Thomas C. Martin, Patrick H. Martin, J. Vincent Martin, Leo R. Martin Michael H. Martin, Rachel I. Martin, Mary A. Standard, Anne F. Martin, Julia F. Martin, Julia Martin, Guardian of the Person and Estate of Michael H. Martin and Julia F. Martin, Minors, and John Martin, the Son of Joseph Martin, and Joseph Martin, Administrator of the Estate of Peter Martin, Deceased, Defendants.

Bill of Complaint.

The complainants above named, Bartholomew Sullivan and Margaret Tholen, say: That they are, respectively citizens and residents of Santa Clara, California, and Overland, Missouri, and that such places are their post office addresses.

That the matter in dispute in this suit exceeds the sum or value of three thousand (\$3,000.00) Dollars, exclusive of interest and costs.

That the determination of this controversy depends, materially, upon the construction to be placed upon the existing treaties between the United States of America and the Kingdom of Great Britain and Ireland which affect the tenure and disposition of real property among the citizens and subjects of said signatory powers.

That heretofore and on or about the 29th day of January, 1915, one Peter Martin, a widower and unmarried, died at Osawatimie, Kansas, intestate and without issue, that at the time of his death and prior thereto, the said decedent was a citizen and resident of

4 the county of Saline, owning real property therein described as follows:

The North half of the Northeast Quarter of Section Twenty Two; also the South half of the Southeast Quarter of Section Fifteen; also the Southeast Quarter of the Southwest Quarter of Section Fifteen; also the Southeast Quarter of Section Eighteen; all lying and situate in Township Fourteen South, Range One, West of the Sixth Principal Meridian.

That prior to the death of said Peter Martin, and by the consideration of the Probate Court of Saline County, Kansas, he the said Peter Martin, was duly adjudged insane and that on or about the — day of —, 190—, the above named Joseph Martin, was appointed Guardian of his person and estate, qualifying and acting as such up and until the death of said ward, that pursuant to such the said Joseph Martin took possession of all real and personal property belonging to his said ward and during said time, the exact date thereof being unknown to your complainants, occupied the Southeast Quarter of Section Eighteen of said real estate and rented the remaining parcels of said real estate to his son, the said John Martin, who are at this time in possession thereof as tenants at will of the owners of said real estate.

That the said Peter Martin, left surviving him the following named brothers and sisters, nephews and nieces:

The said defendant, John Martin, a brother, Solomon, Kansas. The said Defendant, Joseph Martin, a brother, Solomon, Kansas. The said defendant, Anna Martin, now known as Sister Mary Jerome, Leavenworth, Kansas. The said Margaret Ingoldsby, a sister, Township of Sheffield, County of Lennox-Addington, Province of Ontario, Dominion of Canada.

Joseph Hall, James Hall and Ellen Hall, Salina, Kansas, Mary Hall, Thomas Hall, Gertrude Hall, Winifred Hall and William Hall, Kansas City, Missouri; the sons and daughters of Bridget Hall, a deceased sister.

Bernard J. Martin, Edward F. Martin, Thomas C. Martin, J. Vincent Martin, Leo R. Martin, Michael F. Martin, Rachel I. Martin and Julia F. Martin, Salina, Kansas, Patrick H. Martin, Denver, Colorado, Anne F. Martin, Kansas City, Missouri, and Mary A. Standard, née Martin, the sons and daughters of Thomas Martin, a deceased brother and

The said complainants; the son and daughter of Rachel Sullivan, née Martin, a deceased sister,

5 all of whom have attained their majority except the said Michael H. Martin and Julia F. Martin, minors, as aforesaid, and that the said Julia Martin, by the consideration of the Probate Court of Saline County, Kansas, is the duly appointed, qualified and acting Guardian of their estate.

That subsequent to the death of the said Peter Martin and on or about the 28th day of July, 1916, the said Margaret Ingoldsby died, at her home in the Township of Sheffield, county of Lennox-Addington, Province of Ontario, Dominion of Canada, testate, that in her

last will and testament which was duly probated in His Majesty's Surrogate Court, in and for said county and Province, she the said Margaret Ingoldsbly, named as her sole devisee and legatee the said defendant Jane Kidd.

That the said Margaret Ingoldsbly was, at the time of the death of the said Peter Martin, and at the time of her decease a subject of His Britannic Majesty and residence of said Township of Sheffield and a non-resident alien of the United States of America and State of Kansas, by virtue whereof the right of inheritance of the said Margaret Ingoldsbly and her said legatee and devisees, in and to said real estate, are determined by the treaty, now in force, between the Governments of the United States of America and the Kingdom of Great Britain and Ireland, and promulgated August 6, 1900.

That subsequent to the death of the said Peter Martin, the above named Joseph Martin, was, by the consideration of the Probate Court of Saline County, Kansas, appointed Administrator of the estate of said decedent and thereafter duly qualified and is now, and ever since has been, acting as such, that the only interest Joseph Martin, as such administrator, has in said real estate, is: that he, as such administrator, holds said real estate for the payment of the debts of said estate insofar as the personal property thereof is insufficient to pay the same; but complainants aver that all of the debts of the said intestate have been duly paid and that in fact said administrator has no interest in said real estate.

That said real estate is wholly unencumbered of and from any and all liens and mortgage indebtedness.

That under and by virtue of the laws of the State of Kansas, complainants are the owners, in fee simple, of an undivided one (1/6) sixth of said real estate and that said surviving brothers and sisters, and surviving sons and daughters of said deceased brother and sisters, are entitled to the remaining five (5/6) sixths thereof, subject, however, to the right of inheritance in said real property of the said Margaret Ingoldsbly, and her said devisee and legatee to an undivided share or interest therein, such right of inheritance to be determined under and by virtue of the provisions of said treaty, and in the event that it is determined that the said Margaret Ingoldsbly or Jane Kidd are entitled to inherit a share or interest in said real property, then and in that event, said complainants are the owners of an undivided one (1/7) seventh of and in said real property.

That complainants are entitled to a partition of said real estate among the owners thereof, defendants herein, tenants in common, as heretofore alleged so that they may have their share thereof in severalty and that if said real estate can not be divided in kind, then and in that event their share of the proceeds derived from a judicial sale thereof if the said real estate can not be partitioned.

The premises considered, complainants pray: that said defendants, and each of them, be required to answer, herein, therein setting up their claims to their respective interests in said real estate; that upon final hearing it be decreed by the Court that said real estate be partitioned among the heirs at law of the said Peter Martin, deceased, accordingly as their respective interests may appear therein; that in

the event said real estate can not be divided according to such interests that the same be sold and the proceeds derived from the sale thereof be divided as may be consistent with said rights and the principles of equity; and that it be, further decreed, whether or not the defendant, Jane Kidd, devisee as aforesaid, a non-resident alien, have any interest in said real estate, and if so, to what extent and for such other and further relief as to the Court may seem equitable.

GEO. F. BEATTY,
Solicitor for Complainants.

UNITED STATES OF AMERICA,
State and District of Kansas,
County of Saline, ss:

Geo. F. Beatty of lawful age and first duly sworn, on his oath says: that he is solicitor for the complainants, above named; that said complainants are non-residents of the State and District of Kansas, and without the jurisdiction of this court, that said complainants are, respectively, residents of the States of California and Missouri; that he has read the foregoing Bill of Complaint, and knows the contents thereof; that said Bill and the allegations therein contained are true except such allegations as are made upon information and belief and as to such he believes them to be true, so help me God.

GEO. F. BEATTY.

Subscribed in my presence and duly sworn to before me, this 12th day of March, 1917.

[SEAL.]

C. W. LYNN,
Notary Public.

My Commission Expires January 30th, 1921.

Filed in the District Court on March 12, 1917.

Waiver of Service and Entry of Appearance.

We, the above named defendants, whose names are hereunder written, hereby acknowledge receipt of a copy of the Bill of Complaint filed herein, in the Office of the Clerk of the above named Court on the 12th day of March, 1917; and hereby waive service of subpoena and copy of said Bill of Complaint upon us and either of us by the Marshal of said Court and enter our appearance herein.

JOHN MARTIN,
MARY A. STANDARD,
ANNA F. MARTIN,
JOSEPH HALL,
JAMES HALL,
ELLEN HALL,
WILLIAM HALL,
THOMAS HALL,
GERTRUDE HALL,
WINNIFRED HALL,
MARY HALL,
EDWARD F. MARTIN,
BERNARD J. MARTIN,
THOMAS C. MARTIN,
LEO R. MARTIN,
J. VINCENT MARTIN,
RACHEL I. MARTIN,
JULIA MARTIN,

*Guardian of the Persons and Estate of Michael
H. Martin and Julia F. Martin, Minors.*

Filed in the District Court on April 23rd, 1917.

*Waiver of Service of Subpoena and Entry of Appearance of
Jane Kidd.*

I, the undersigned solicitor for Jane Kidd, defendant, above named, hereby enter the appearance of said defendant in said cause, acknowledge receipt of copy of Bill of Complaint filed herein on the 12th day of March, 1917, waive the issuance and service of process upon said defendant and enter my appearance as Solicitor for the said defendant.

H. C. TOBEY,
Solicitor for Defendant.

Salina, Kansas, Apr. 21, 1917.

Filed in the District Court on April 23, 1917.

Waiver of Service and Entry of Appearance.

We, the undersigned solicitors for Joseph Martin, Joseph Martin, Administrator of the estate of Peter Martin, deceased, Patrick H.

Martin, John Martin son of Joseph Martin and Anna Martin now known as Sister Mary Jerome, defendants above named, hereby enter the appearance of said defendants, in said cause, acknowledge receipt of a copy of the Bill of Complaint filed herein on the 12th day of March, 1917, waive the continuance and service of process upon said defendants and enter our appearance herein as Solicitors for them and each of them.

BURCH, LITOWICH AND ROYCE,

Solicitors for said Defendants,

By C. W. BURCH, *Member of said Firm.*

Filed in the District Court on April 23, 1917.

*Preceipe for Chancery Subpoena for Michael H. Martin and
Julia F. Martin.*

To Morton Albaugh, Esq., Clerk of said court:

You will please issue subpoenas to the above named defendants, Michael H. Martin and Julia F. Martin directed to the Marshal of said court and returnable according to law.

Salina, Kansas, April 21, 1917.

GEO. F. BEATTY,

Solicitor for Complainant.

Filed in the District Court on April 23, 1917.

Chancery Subpoena.

UNITED STATES OF AMERICA,

District of Kansas, ss:

The United States of America to Michael H. Martin and Julia F. Martin, Greeting:

This is to command you and every of you, that you appear before the Judge of the District Court of the United States of America for the District of Kansas, at the City of Topeka, in said District, to answer the Bill of Complaint of Bartholomew Sullivan and Margaret

Tholen this day filed in the Clerk's office of said Court in said City of Topeka, to receive and abide by such judgment and decree as shall then or thereafter be made upon pain of judgment being pronounced against you by default.

To the Marshal of the District of Kansas to execute.

Witness, the Hon. John C. Pollock, Judge of the District Court of the United States of America for the District of Kansas, at the City of Topeka in said District, this 23rd day of April, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.]

MORTON ALBAUGH, *Clerk,*

By F. L. CAMPBELL,

Deputy Clerk.

Memorandum.

The above-named defendants are notified that unless they file their answer or other defense in the Clerk's office of said Court, at the City of Topeka, aforesaid, on or before the twentieth day after service of the above writ (excluding the day of service), the Bill of Complaint may be taken pro confesso and a decree entered accordingly.

MORTON ALBAUGH, *Clerk*,

By F. F. COMPELL, *Deputy Clerk*.

U. S. Marshal's Return.

DISTRICT OF KANSAS, ss:

Received the within writ — Topeka, April 28, 1917, and executed the same as follows to-wit: Served on the within named Michael H. Martin, by leaving a true and certified copy of this writ with all endorsements thereon at his usual place of residence and abode with an adult member of the family, at Salina, Kansas, April 28, 1917.

11 Served on the within named Julia F. Martin, personally a true and certified copy of this writ with all endorsements thereon at Salina, Kansas, April 28, 1917.

O. T. WOOD,

U. S. Marshal,

By J. M. MYERS, *Deputy*.

Fees \$15.21.

At the same time and place and in like manner I served a copy of the Bill of Complaint filed in this case on the above named person.

O. T. WOOD,

U. S. Marshal,

By J. M. MYERS, *Deputy*.

Filed in the District Court on May 1, 1917.

Amended Bill of Complaint.

The complainants, above named, Bartholomew Sullivan and Margaret Tholen, say: that they are respectively citizens and residents of Santa Clara, California, and Overland, Missouri.

That the matter in dispute in this suit exceeds the sum or value of three thousand (\$3,000.00) Dollars, exclusive of interest and costs.

That the determination of this controversy depends, materially, upon the construction to be placed upon the existing treaties between the United States of America and the Kingdom of Great Britain and Ireland which affect the tenure and disposition of real property among the citizens and subjects of said signatory powers.

That heretofore and on or about the 29th day of January, 1915, one Peter Martin, a widower and unmarried, died at Osawatomie,

Kansas, intestate and without issue, that at the time of his death, and prior thereto, the said decedent was a citizen and resident of the county of Saline, owning real property therein, described as follows:

12 The North half of the Northeast Quarter of Section Twenty Two; also the South half of the Southeast Quarter of Section Fifteen; also the Southeast Quarter of the Southwest Quarter of Section Fifteen; also the Southeast Quarter of Section Eighteen; all lying and situate in Township Fourteen South, Range One, West of the Sixth Principal Meridian.

That prior to the death of said Peter Martin, and by the consideration of the Probate Court of Salina County, Kansas, he the said Peter Martin, was duly adjudged insane and that on or about the — day of —, 190—, the above named Joseph Martin, was appointed guardian of his person and estate, qualified and acting as such up and until the death of said ward, that pursuant to such the said Joseph Martin took possession of all real and personal property belonging to his said ward and during said time, the exact date thereof being unknown to your complainants, occupied the Southeast Quarter of Section Eighteen of said real estate and rented the remaining parcels of said real estate to his son, the said John Martin, who are at this time in possession thereof as tenants at will of the owners of said real estate.

That the said Peter Martin, left surviving him the following named brothers and sisters, nephews and nieces:

The said defendant, John Martin, a brother, Solomon, Kansas. The said defendant, Joseph Martin, a brother, Solomon, Kansas. The said defendant, Anna Martin, now known as Sister Mary Jerome, Leavenworth, Kansas. The said Margaret Ingoldsbly, a sister, Township of Sheffield, County of Lennox-Addington, Province of Ontario, Dominion of Canada.

Joseph Hall, James Hall and Ellen Hall, Salina, Kansas, Mary Hall, Thomas Hall, Gertrude Hall, Winnifred Hall and William Hall, Kansas City, Missouri; the sons and daughters of Bridget Hall, a deceased sister.

Bernard J. Martin, Edward F. Martin, Thomas C. Martin, J. Vincent Martin, Leo R. Martin, Michael H. Martin, Rachel I. Martin and Julia F. Martin, Salina, Kansas, Patrick H. Martin, Denver, Colorado, Anne F. Martin, Kansas City, Missouri, and Mary A. Standard, née Martin, the sons and daughters of Thomas Martin, a deceased brother and

The said complainants; the son and daughter of Rachel Sullivan, née Martin, a deceased sister.

all of whom have attained their majority except the said
13 Michael H. Martin and Julia F. Martin, minors, as aforesaid, and that the said Julia Martin, by the consideration of the Probate Court of Salina County, Kansas, is the duly appointed, qualified and acting Guardian of the estate of said minors.

That subsequent to the death of the said Peter Martin and on or about the 28th day of July, 1916, the said Margaret Ingoldsbly died

at her home in the township of Sheffield, county of Lennox-Addington, Province of Ontario, Dominion of Canada, and that at the time of her death she, the said Margaret Ingoldsby, was a citizen and resident of said township, county, province and dominion, and a non-resident alien of the United States of America and State of Kansas, that in her Last Will and Testament which was duly filed and probated in his Majesty's Surrogate Court sitting in and for said county and Province, the said defendant, Jane Kidd was duly named as sole legatee and devisee, a copy of said last will and testament being hereto annexed, marked Exhibit A and made part of this amended Bill of Complaint, by virtue whereof the right of inheritance of the said Margaret Ingoldsby and her said legatee and devisee are determined by the conventions of 1899 and 1902, entered into by and between the Governments of His Britannic Majesty and the United States of America and affecting the tenure and disposition of real and personal property between the citizens and subjects of said signatory powers.

That subsequent to the death of the said Peter Martin, the above named Joseph Martin, was, by the consideration of the Probate Court of Salina County, Kansas, appointed Administrator of the estate of said decedent and thereafter duly qualified as such and is now and always has been acting in such capacity, that the only interest said Joseph Martin has in said property as said administrator, is that he holds said real estate for the payment of the debts of said estate insofar as the personal property of the estate of said decedent is insufficient to pay the same; but complainants aver that all of the debts of said estate have been paid and that in fact said administrator has no interest in said real estate.

That the said real estate is wholly unencumbered of and from all liens and mortgage indebtedness.

That under and by virtue of the laws of the State of Kansas, complainants herein are the owners in fee simple of an undivided one sixth of the real estate hereinbefore described, and that the said defendants, other than the said Jane Kidd as sole legatee and devisee of the said Margaret Ingoldsby, deceased, Joseph Martin, as administrator of the estate of the said Peter Martin, deceased, and John Martin the son of Joseph Martin, are the owners, in fee simple, of the remaining five-sixths of said real estate.

That complainants herein, are entitled to a partition of said real estate among the owners thereof, tenants in common defendants herein, other than the said Joseph Martin, Administrator, John Martin the son of Joseph Martin, and the said Jane Kidd, the sole legatee and devisee under the last will and testament of the said Margaret Ingoldsby, Deceased, as heretofore alleged, so that they may have their share in severalty in said real estate, and that if said property can not be divided in kind, then and in that event that their share of the proceeds derived from a judicial sale thereof if said property can not be partitioned in kind.

The premises considered complainants pray that the said defendants and each of them be required to answer herein, therein setting up their right, title, estate and interest in, to and upon said real estate or any part thereof, and that upon final hearing by the Court it be decreed that said real estate be partitioned among the owners thereof

the heirs of the said Peter Martin, deceased, accordingly as their respective interests may appear therein; that the Court decree that the complainants herein, are the owners in fee simple of an undivided one sixth of said real estate; that said real estate be sold and

15 that the proceeds derived from the judicial sale thereof be divided as may be consistent with said rights and the principles of equity and that it be further decreed that the said Jane Kidd, Joseph Martin, Administrator and John Martin the son of Joseph Martin, have no right, title, claim estate or interest in, to or upon said real estate or any part thereof of any kind or character whatsoever, and for such other and further relief as to the Court may seem equitable and just including judgment for costs.

GEO. F. BEATTY,
Solicitor for Complainants.

Salina, Kansas, July 23, 1917.

UNITED STATES OF AMERICA,

*State and District of Kansas,
County of Saline, ss:*

Bartholomew Sullivan of lawful age and first duly sworn on his oath, says, that he is one of the complainants, above named; that he has read the above and foregoing Amended Bill of Complaint, and knows the contents thereof, that said Amended Bill of Complaint and the allegations therein contained except such allegations as are made upon information and belief are true and as to such allegations as are made upon information and belief he believes them to be true, So help him God.

BARTHOLOMEW SULLIVAN.

Subscribed in my presence and duly sworn to before me this 21st day of July, 1917.

[SEAL.]

RALPH ANDERSON,
Notary Public.

My Commission expires Feb. 10, 1921.

Filed in the District Court on July 25th, 1917.

16 *Acceptance of Service of Amended Bill of Complaint.*

I, the undersigned solicitor for the above named John Martin, Joseph Hall, James Hall, Ellen Hall, Mary Hall, Thomas Hall, Gertrude Hall, Winnifred Hall, William Hall, Bernard J. Martin, Edward F. Martin, Thomas C. Martin, Rachel I. Martin, Mary A. Standard, Anne F. Martin, J. Vincent Martin, Leo R. Martin, Michael H. Martin, Julia F. Martin and Julia Martin, Guardian of the person and estate of Michael H. Martin and Julia F. Martin, Minors, being duly authorized to so do hereby accept service on behalf of the said defendants of a copy of the amended bill of complaint this 25th day of July, 1917.

GEO. F. BEATTY.

Filed in the District Court on July 25th, 1917.

Acceptance of Service of Amended Bill of Complaint.

We, the undersigned Solicitors for the above named defendants, Joseph Martin, Anna Martin now known as Sister Mary Jerome, Patrick H. Martin, Joseph Martin as administrator of the estate of Peter Martin deceased and John Martin the son of Joseph Martin, hereby accept service of the amended bill of complaint by copy thereof this 25th day of July, 1917.

BURCH, LITOWICH & ROYCE,
By C. W. BURCH,
Member of said Firm.

Filed in the District Court on July 25, 1917.

17 *Motion for Service on Absent Defendant.*

Come now the complainants above named and show to the Court that the above named defendant, Jane Kidd, is not an inhabitant of the State of Kansas and is without the confines thereof and can not be served personally with a subpoena within said State and District; that said defendant is an inhabitant of the township of Sheffield, County of Lennox and Addington, Province of Ontario, Dominion of Canada. Wherefore, complainants move this Honorable Court that an order may be made and entered in this proceeding therein directing that service of copy thereof together with a certified copy of the amended Bill of Complaint be made upon the said defendant by some suitable person and that therein the said defendant be directed to answer, demur or otherwise plead to said amended Bill of Complaint heretofore filed herein, on or before such date as to the Court may seem just and proper.

BARTHOLOMEW SULLIVAN,
MARGARET THOLEN,
By GEO. F. BEATTY,
Their Solicitor.

Filed in the District Court July 26, 1917.

18 *Order for Service on Absent Defendant.*

It appearing that this is an action for the partition of real estate situate within the county of Saline and State and District of Kansas, and to establish claims upon and title thereto, and that Jane Kidd, one of said defendants is not an inhabitant of the State of Kansas and is an inhabitant of the township of Sheffield, County of Lennox-Addington, Province of Ontario, Dominion of Canada and that personal service of subpoena can not be had upon said defendant within said District of Kansas, it is

Ordered, that said defendant, Jane Kidd within 20 days from the date of service upon her of a copy of this order together with a copy of the amended bill of complaint; appear and answer, demur or otherwise plead to said Bill.

Witness my hand and the seal of said Court, this 27th day of July, 1917.

ARBA S. VAN VALKENBURGH,
Judge Assigned.

Filed in the District Court July 27, 1917.

19 *Return of Service.*

On this 7th day of August, 1917, before me, the undersigned a Commissioner to administer oaths in and for the county of Lennox-Addington, Province of Ontario, Dominion of Canada, came Jacob Dollar Bell to me personally known to be the identical person whose name is hereinafter subscribed and who is Sheriff's Special Officer of said county, and makes oath and says that he did, on the 6th day of August, A. D. 1917, personally serve Jane Kidd with a certified copy of the order and certified copy of the amended bill of Complaint which are hereto annexed by delivering to her, the said Jane Kidd, at her home in the township of Sheffield, county of Lennox-Addington, in said Province and Dominion, a true and certified copy of said order and said amended Bill, and I further make oath and say that I am not interested in this suit.

J. D. BELL.

Subscribed in my presence and duly sworn to before me, this 7th day of August, A. D. 1917.

[SEAL.]

W. A. GRANGE,

Notary Public in and for the Province of Ontario.

My commission for life.

Fees \$6.16.

Filed in the District Court August 13, 1917.

20 *Answer of Anna Martin, Now Known as Sister Mary Jerome.*

Comes now the above named defendant, Anna Martin, now known as Sister Mary Jerome, and for answer to complainants' bill of complaint filed in said cause, admits the facts and allegations therein set forth and contained.

This answering defendant further alleges that she inherited an undivided one-sixth (1/6) of the real estate described in plaintiffs' bill of complaint as a sister and heir at law of Peter Martin, deceased; and this defendant *is* now the owner in fee simple of and is entitled to the possession of an undivided one-sixth (1/6) of said real estate.

This answering defendant further states that said real estate cannot be partitioned among the several owners thereof without manifest injury, and the best interests of each of the parties to said cause require that said real estate be duly advertised and sold in the manner provided by law.

Wherefore, this answering defendant prays that she be adjudged

to be the owner in fee simple of an undivided one-sixth (1/6) of said real estate; that partition of said real estate be made in the manner provided by law; and that upon the distribution of the proceeds of the sale of said real estate, this defendant have an undivided one-sixth (1/6) thereof; and that she have judgment for her costs in this behalf expended.

BURCH, LITOWICH & ROYCE,

*Attorneys for Anna Martin, Now
Known as Sister Mary Jerome.*

Filed in the District Court October 8, 1917.

21 *Answer of Joseph Martin, Administrator of the Estate of
Peter Martin, Deceased.*

Comes now Joseph Martin, administrator of the estate of Peter Martin, deceased, one of the defendants in the above entitled cause, and for answer to complainants' bill of complaint, alleges that on or about the — day of February, 1915, he was, by the consideration of the Probate Court of Saline County, Kansas, duly appointed as administrator of the estate of Peter Martin, deceased, and thereafter duly qualified as such, and is now the duly appointed, qualified and acting administrator of the estate of Peter Martin, deceased. That all claims which have been presented to said Probate Court for allowance have been adjudicated and determined, and have been fully paid, and this answering defendant has a small balance on his hands ample in amount to pay the costs of administration.

Wherefore, this answering defendant disclaims any interest in said real estate at this time, and prays judgment for his costs in this behalf expended.

BURCH, LITOWICH & ROYCE,

*Attorneys for Joseph Martin, Administrator
of the Estate of Peter Martin, Deceased.*

Filed in the District Court October 8, 1917.

22 *Answer of John Martin, Jr.*

Comes now the above named defendant, John Martin, Jr., the son of Joseph Martin, a defendant in the above entitled cause, and for answer to complainant's bill of complaint filed in said cause, alleges that he is in possession of the real estate described in complainants' bill of complaint as a tenant thereof; that by agreement of the owners of said real estate he has prepared — acres of said real estate and has sown the same to fall wheat in the fall of 1917, at great expense to him. By the terms of said agreement, as tenant, this answering defendant is to harvest said wheat and deliver to the owners of said real estate an undivided one-third (1/3) of said wheat at the threshing machine.

Wherefore, this answering defendant prays that if partition of said real estate be made, that in said order of partition the said

rights of this defendant be preserved to him, and if said real estate is sold by virtue of these proceedings, that the same be sold subject to his said rights as tenant.

Defendant further prays for his costs in this behalf expended.

BURCH, LITOWICH & ROYCE,

Attorneys for John Martin, Jr.

Filed in the District Court on October 8, 1917.

23

Answer of Joseph Martin.

Comes now the above named defendant, Joseph Martin, and for answer to complainants' bill of complaint filed in said cause admits the facts and allegations therein set forth and contained.

This answering defendant further alleges that he inherited an undivided one-sixth ($1/6$) of the real estate described in plaintiffs' bill of complaint as a brother and heir at law of Peter Martin, deceased. That he has purchased the interest of Patrick Martin in said real estate, as set forth in plaintiffs' bill of complaint, to wit: an undivided one-sixty-sixth ($1/66$) of said real estate; and this defendant is now the owner of in fee simple and is entitled to the possession of an undivided twelve sixty-sixths ($12/66$) of said real estate.

This answering defendant further states that said real estate cannot be partitioned among the several owners thereof without manifest injury, and the best interests of each of the parties to said cause require that said real estate be duly advertised and sold in the same manner provided by law.

Wherefore, this answering defendant prays that he be adjudged to be the owner in fee simple of an undivided twelve sixty-sixths ($12/66$) of said real estate; that partition of said real estate be made in the manner provided by law; and that upon the distribution of the proceeds of the sale of said real estate, this defendant have an undivided twelve sixty-sixths ($12/66$) thereof; and that he have judgment for his costs in this behalf expended.

BURCH, LITOWICH & ROYCE,

Attorneys for Joseph Martin.

Filed in the District Court on October 8th, 1917.

24

Answer of Patrick Martin.

Comes now the above named defendant, Patrick Martin, and for answer to complainants' bill of complaint filed in the above entitled cause, admits the facts and allegations therein set forth, and alleges that he inherited from his deceased uncle, the said Peter Martin, an undivided one-sixty-sixth ($1/66$) of the real estate described in complainants' said bill of complaint, and thereby became the owner thereof, and was entitled to the possession thereof. That since the death of the said Peter Martin this answering defendant has sold and conveyed all of his right and title to and interest in said real

estate to his co-defendant herein, Joseph Martin, who is now the owner and holder thereof, and entitled to the immediate possession thereof.

Wherefore, this answering defendant disclaims any interest in said real estate, and prays judgment for his costs in this behalf expended.

BURCH, LITOWICH & ROYCE,
Attorneys for Patrick Martin.

Filed in the District Court on October 8th, 1917.

Application for Appointment of Guardian Ad Litem.

Comes now Julia Martin, Guardian of the person and estate of the above named minors and shows to the Court that said minors are respectively niece and nephew of Peter Martin, deceased, who died, intestate, unmarried and without issue, owning real estate described in the amended Bill of Complaint, heretofore filed herein, in which said minors have an undivided estate of inheritance, in fee simple, in said real estate; that said minors have heretofore been duly served with process in this proceeding and are necessary parties to
25 this suit; that the said Julia Martin is of the age of eighteen years; that the said Michael H. Martin is of the age of twenty years and are therefore incompetent to defend their interests in said suit, and therefore said Guardian moves that a Guardian Ad Litem be appointed by this court to defend the rights of said minors in said litigation.

Salina, Kansas, October 10, 1917.

GEO. F. BEATTY,
Attorney for said Guardian.

Filed in the District Court on October 11th, 1917.

Order Appointing Guardian Ad Litem.

It appearing to the Court that the above named Julia F. Martin and Michael H. Martin, minor defendants have been duly served with process in this suit, and that said Julia F. Martin is of the age of eighteen years, and said Michael H. Martin is of the age of twenty years, now upon application of Julia Martin, Guardian of said Minors, it is

Ordered that Julia Martin be appointed Guardian Ad Litem for said minor defendants.

Witness the Honorable John C. Pollock, Judge of said Court at Leavenworth in said District, this 11th day of October, 1917.

JOHN C. POLLOCK,
United States District Judge.

Filed in the District Court on October 11, 1917.

26 *Answer of Julia F. and Michael H. Martin, Minors.*

The above named minor defendants, Julia F. Martin and Michael H. Martin by Julia Martin, their Guardian Ad Litem in answer to the Amended Bill of Complaint, filed herein, admit the allegations and facts therein contained and thereupon say:

That as the son and daughter of Thomas Martin, a deceased brother of Peter Martin, deceased, they are the owners in fee simple by right of inheritance of an undivided one (1/23) thirty-third of the real estate described in said Bill and entitled to the possession thereof and said defendants further say

That said real estate can not be partitioned in kind among the respective owners thereof without manifest injury to the rights of such owners; that the best interest of such owners will be more equitably subserved by the sale of said property, after due advertisement, in the manner prescribed by law.

The premises considered, defendants pray that they be adjudged to be the owners of an undivided one (1/23) thirty-third of said real estate that said real estate be sold in the manner prescribed by law; that said defendants be adjudged to be entitled to their respective shares of the proceeds derived from the sale of said property and that the same be distributed among them as may be consistent with equity and for their costs laid out herein.

JULIA MARTIN,

Guardian ad Litem for said Minors,

By GEO. F. BEATTY, *Attorney.*

Oct. 17, 1917.

Filed in the District Court on October 19, 1917.

27 *Answer of Bernard J. Martin et al.*

The above named defendants, Bernard J. Martin, Edward F. Martin, Thomas C. Martin, J. Vincent Martin, Leo R. Martin, Rachel I. Martin, Mary A. Standard and Anne F. Martin, in answer to the Amended Bill of Complaint, filed herein, admit the allegations and facts therein contained, thereupon say

That as the sons and daughters of Thomas Martin, a deceased brother of Peter Martin, deceased, they are the owners in fee simple by right of inheritance of an undivided eight (8/66) sixty-sixths of the real estate in Bill described and entitled to the possession thereof and further say

That said real estate can not be partitioned in kind among the owners thereof without manifest injury to the respective owners thereof; that the best interest of such owners will be more equitably subserved by the sale of said property, after due advertisement, in the manner prescribed by law.

The premises considered, defendants pray: that they be adjudged to be the owners of an undivided eight (8/66) sixty-sixths of said

real estate; that said real estate be sold in the manner prescribed by law; that said defendants be entitled to their respective shares of the proceeds derived from the sale thereof and that the same be distributed among them as may be consistent with equity, and for their costs laid out herein.

GEO. F. BEATTY,

Attorney for Defendants.

Salina, Kansas, October 17, 1917.

Filed in the District Court on October 19, 1917.

Answer of Joseph Hall et al.

The above named defendants, Joseph Hall, James Hall, Ellen Hall, Mary Hall, Thomas Hall, Gertrude Hall, Winnifred Hall and William Hall, in answer to the Amended Bill of Complaint, filed herein admit the allegations and facts therein contained and thereupon say

That as the sons and daughters of Bridget Hall, a deceased sister of Peter Martin, deceased, they are the owners in fee simple, by right of inheritance of an undivided one (1/6) sixth of the real estate in said Bill described, and entitled to the possession thereof, and said defendants further say

That said real estate can not be partitioned among the respective owners thereof without manifest injury to such owners; that the best interest of such owners will be more equitably subserved by the sale of said property after due advertisement in the manner prescribed by law.

The premises considered, defendants pray that they be adjudged to be the owners of an undivided one sixth of said real estate; that said real estate be sold in the manner prescribed by law; that said defendants be entitled to their share of the proceeds derived from the proceeds arising from the sale thereof and that the same be distributed among them as may be consistent with equity, and for their costs laid out herein.

GEO. F. BEATTY,

Attorney for Defendants.

Salina, Kansas, October 17, 1917.

Filed in the District Court on October 19, 1917.

Answer of John Martin.

The above named defendant, John Martin, in answer to the Amended Bill of Complaint filed herein, admits the allegations and facts therein contained, and thereupon says:

That as a brother of and heir at law of Peter Martin, deceased, he is the owner, in fee simple, by right of inheritance of an undivided one (1/6) sixth of the real estate in said bill described, and entitled to the immediate possession thereof, and further says:

That said real estate cannot be partitioned in kind among the respective owners thereof without manifest injury to such owners; that the best interests of such owners will be more equitably subserved by the sale of said property after due advertisement in the manner prescribed by law.

The premises considered, defendant prays that he be adjudged to be the owner of an undivided one (1/6) sixth of said real estate; that said real estate be sold in the manner prescribed by law and that said defendant be entitled to an one sixth (1/6) of the proceeds derived from the sale of said real estate, and that the proceeds arising from said sale be distributed as may be consistent with equity, and for costs herein laid out.

JOHN MARTIN,

By GEO. F. BEATTY,

His Attorney.

Oct. 17, 1917.

Filed in the District Court on October 19, 1917.

30 *Application for Order Taking Bill as Confessed.*

Come now the complainants above named and show to the Court that by virtue of an order issuing out of this Court, together with a certified copy of the Amended Bill of Complaint herein thereto attached duly, regularly and personally served upon the said defendant, Jane Kidd, on the 6th day of August, 1917, the said defendant was directed to answer said Amended Bill or plead thereto within twenty days from the service thereof, that the time within which an answer or other could be filed as provided in said order has long since elapsed, and that no answer or other pleading has been filed, therefore said complainants respectfully request that an order be entered in the order book taking said Amended Bill as confessed as to said defendant, Jane Kidd.

Salina, Kansas, November 21, 1917.

GEO. F. BEATTY,

Solicitor for Complainants.

Filed in the District Court on November 22, 1917.

Stipulation.

The said parties to this cause, other than said defendant, Jane Kidd, appearing by their respective solicitors of record; Geo. F. Beatty and Burch, Litowich and Royce, all of said parties being of full age and understanding, including said minors, said minors having attained their majority, subsequent to the commencement of this suit, hereby waive the provisions of the Kansas law relative to the appointment of appraisers and appraisal of property in parti-

tion and consent to the sale of the real estate described in the amended bill of complaint in this cause without appraisal.

31

BARTHOLOMEW SULLIVAN AND
MARGARET THOLEN,

Complainants,

By GEO. F. BEATTY,

Their Solicitor,

JOSEPH MARTIN,
PATRICK H. MARTIN,
ANNA MARTIN, AND
JOHN MARTIN,

Son of Joseph Martin;

JOSEPH MARTIN,

Administrator, Defendants,

By WILCOX, LITOWICH & BOYCE,

JOSEPH HALL,
JAMES HALL,
ELLEN HALL,
MARY HALL,
WILLIAM HALL,
WINNIFRED HALL,
GERTRUDE HALL,
THOMAS HALL,
BERNARD J. MARTIN,
EDWARD F. MARTIN,
THOMAS C. MARTIN,
LEO R. MARTIN,
J. VINCENT MARTIN,
MICHAEL H. MARTIN,
RACHEL I. MARTIN,
MARY A. STANDARD,
ANNE F. MARTIN,
JULIA F. MARTIN,

Defendants,

By GEO. F. BEATTY,

Their Solicitor,

Filed in the District Court on March 5, 1918.

Decree.

This cause came on to be heard at this term upon motion of the complainants above named, Bartholomew Sullivan and Margaret Tholen appearing by Geo. F. Beatty, their solicitor, in the cause wherein they are complainants and John Martin, Joseph Martin, Anna Martin, Jane Kidd, Joseph Hall, James Hall, Ellen Hall, Mary Hall, Thomas Hall, Winnifred Hall, Gertrude Hall, William Hall, Bernard J. Martin, Edward F. Martin, Patrick H. Martin, Thomas C. Martin, Leo R. Martin, J. Vincent Martin, Michael H. Martin, Rachel I. Martin, Mary A. Standard, Anne F. Martin, Julia F. Martin, Julia Martin, Guardian of Julia F. Martin and Michael

32 H. Martin, minors, John Martin, the son of Joseph Martin and Joseph Martin, Administrator of the estate of Peter Martin, deceased, are defendants, said defendants other than the said Jane Kidd appearing by Burch Litowich & Royce and Geo. F. Beatty, their respective solicitors, the said Jane Kidd not appearing but being in default, and it appearing

That the Bill of Complaint in this cause was filed on or about the 12th day of March, 1917, and that service of the same was duly made upon said Minors in the manner prescribed by law and that thereupon all defendants above named, other than said minors, waived the issuance and service of subpoena upon them and each of them and entered their voluntary appearance in said cause and it further appearing

That thereafter and on the 25th day of July, 1917, the said complainants filed in this cause their amended Bill in Equity and that service of the same together with an order requiring defendant, Jane Kidd, to answer or otherwise plead to said amended Bill was duly made upon said defendant and that thereafter on the 22d day of November, 1917, the said Jane Kidd failing to answer or otherwise plead to said amended Bill that an order taking said Bill as confessed as to said defendant, Jane Kidd, was entered in the order book and that more than thirty days have elapsed since the entry of said order taking said amended bill as confessed and that no proceeding has been taken or had by said Jane Kidd since the entry of said order taking said amended bill as confessed and it further appearing that all defendants above named have filed answer to said amended bill the said Julia F. Martin and Michael H. Martin, Minors, answering by their Guardian ad litem, Julia Martin, heretofore and on the 11th day of October, 1917, appointed herein, therein setting forth the right, title and interest of them and each of

33 them, the said defendants, in and to the real estate herein-after described and therein waiving partition of said realty in kind and consenting to the sale of the same without appraisalment, now therefore

Upon consideration of said amended Bill of Complaint, the answers thereto of said defendants, the said proofs and the default of the said Jane Kidd, as aforesaid, the Court finds

That said amended bill of complaint and the allegations therein contained are true; that heretofore and on the 29th day of January, 1915, one Peter Martin died intestate, unmarried and without issue, and at the time of his death, he, the said Peter Martin, was the owner in fee simple of the real estate hereinafter described; and the Court further finds

That the said Peter Martin left surviving him as his sole and only heirs at law the following named persons and that said persons and each of them are now of full age and are seized, in fee simple, by right of inheritance, of portions of real estate as hereinafter set forth, that is to say:

The said complainants, Bartholomew Sullivan and Margaret Tholen, the son and daughter of Rachel Sullivan, a deceased sister of the said Peter Martin, an equal one-twelfth (1/12) each.

The said defendant, John Martin, a brother of said decedent, a one sixth (1/6).

That said defendant, Joseph Martin, a brother of said decedent a one sixth (1/6) and in addition thereto as grantee of said defendant Patrick H. Martin a one sixty-sixth, or an undivided twelve sixty-sixths (12/66).

34 The said defendant, Anna Martin, now known as Sister Mary Jerome, a sister of said decedent, a one-sixth (1/6).

The said defendants, Joseph Hall, James Hall, Ellen Hall, Mary Hall, William Hall, Gertrude Hall, and Thomas Hall, the sons and daughters of Bridget Hall, a deceased sister of the said decedent, an equal one-fortyeighth (1/48) each.

The said defendants, Bernard J. Martin, Edward F. Martin, Patrick H. Martin, Thomas C. Martin, Leo R. Martin, J. Vincent Martin, Michael H. Martin, Rachel I. Martin, Mary A. Standard, Anne F. Martin and Julia F. Martin, the sons and daughters of Thomas Martin, a deceased brother of said decedent, an equal one-sixty-sixth (1/66) each, and the Court further finds that said Patrick H. Martin has conveyed his said one-sixty-sixth (1/66) to Joseph Martin who is now the owner thereof; and

That the defendant, Jane Kidd, is without any right, title, estate or interest in, to or upon said real estate or any part thereof.

That the said defendant, Joseph Martin, Administrator of the estate of said decedent, is without any right, title, estate or interest in, to or upon said real estate or any part thereof.

That the said defendant, John Martin, the son of Joseph Martin, is a tenant at will of such portions of the real estate hereinafter described and has no other right, title, estate or interest in, to or upon such real estate other than to harvest and remove such growing crops sowed by him thereon, and the Court further finds that such real estate, to wit:

35 The North Half of the Northeast Quarter of Section Twenty-two; also the South Half of the Southeast Quarter of Section Fifteen; also the Southeast Quarter of the Southwest Quarter of Section Fifteen; also the Southeast Quarter of Section Eighteen; all lying and being in Township Fourteen, South, Range One, West of the Sixth Principal Meridian, in the County of Saline and State of Kansas, containing Three Hundred Sixty Acres, more or less, according to the Government Survey thereof,

together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, should be offered for sale and sold, at public outcry, without appraisal, free, clear and discharged of and from all and any the claims or demands of whatsoever kinds or nature of any and all the parties to this suit or any and all person or persons claiming by, through or under them or any of them, to the highest bidder for cash, in parcels altogether, that is to say: the realty situate in each Section to be sold separately, thereupon all of said realty to be offered for sale and sold, thereupon the highest aggregate amount or amounts bid for said realty shall prevail, and it is therefore

Ordered, adjudged and decreed; that the right, title, estate and interest of said parties to this suit in and to the real estate herein-after described be and the same is hereby determined as hereinbefore found and set out; that said real estate be sold at public outcry, at the east door of the Saline County Court House, in the City of Salina, County of Saline and State of Kansas, in the manner and upon the terms hereinbefore found and set out, and; that notice of such sale, the time, place, manner and terms thereof, be given in the manner prescribed by law, by advertisement in the Salina Sun, a newspaper printed and published in Saline County, Kansas, and of general circulation in said County and State, and it is further

36 Ordered, adjudged and decreed that on account of his special fitness that F. L. Campbell, as Special Master in Chancery, do execute this Decree and make such sales or sale of said real estate as herein ordered and decreed and that he apply the proceeds derived from the sale of said real estate as follows: (1) In the payment of costs of this suit, including the compensation and expenses of respective solicitors, the execution of this decree and of making such sale. (2) In the payment of all Taxes and legal assessments due and outstanding against the said real estate. (3) The balance then remaining shall be distributed among the said complainants and defendants accordingly as the respective interests of them and each of them appear as hereinbefore computed and determined, and it is further

Ordered, adjudged and decreed; That the said F. L. Campbell, Special Master in Chancery, as aforesaid, execute to said purchasers or purchaser of said real estate a good and sufficient instrument of conveyance of and to said real estate, reciting therein that said parties to this suit and all persons claiming through, by or under them are forever barred from all right, title, estate, interest, claim, demand or equity of redemption in, to or upon said real estate or any part thereof, except the rights of the said John Martin, as hereinbefore found and set out, and that the possession of said real estate together with the tenements, hereditaments and appurtenances thereunto belonging, be, immediately delivered to the purchasers or purchaser thereof, subject however to the rights of said John Martin, as hereinbefore found, and it is further

Ordered, adjudged and decreed that the said F. L. Campbell, as Special Master in Chancery, do make due return of all his proceedings hereunder unto the said Court for action of the Court
37 thereon, prior to the delivery of the instrument of instruments of conveyance of said property to the purchaser or purchasers thereof, and the Court retains jurisdiction of this cause for the purpose of enforcing the provisions of this Decree by writ of assistance if necessary to place the purchaser or purchasers in the possession of the premises directed to be sold, and otherwise, to the end that this Decree may be fully carried out.

Witness the Honorable John C. Pollock, Judge of said Court, this 11th day of March, 1918.

JOHN C. POLLOCK, *Judge.*

Approved:

BARTHOLOMEW SULLIVAN AND
MARGARET THOLEN,

Complainants,

By GEO. F. BEATTY,

Their Solicitor,

JOHN MARTIN,
JOSEPH HALL,
JAMES HALL,
ELLEN HALL,
MARY HALL,
THOMAS HALL,
GERTRUDE HALL,
WINNIFRED HALL, AND
WILLIAM HALL,

Defendants,

By GEO. F. BEATTY,

Their Solicitor,

BERNARD J. MARTIN,
EDWARD F. MARTIN,
THOMAS C. MARTIN,
LEO R. MARTIN,
J. VINCENT MARTIN,
RACHEL I. MARTIN,
MARY A. STANDARD,
ANNE F. MARTIN,

By GEO. F. BEATTY,

Their Solicitor,

JOSEPH MARTIN,

By BURCH, LITOWICH & ROYCE,

His Solicitor,

ANNA MARTIN,

Now Known as Sister Mary Jerome,

By BURCH, LITOWICH & ROYCE,

Her Solicitor,

PATRICK H. MARTIN,

By BURCH, LITOWICH & ROYCE,

His Solicitors,

MICHAEL H. MARTIN AND
JULIA F. MARTIN,

Appearing by Julia Martin,

Their Guardian ad Litem, and

By GEO. F. BEATTY,

Their Solicitor,

JOSEPH MARTIN,

Administrator of the Estate

of Peter Martin, Deceased,

JOHN MARTIN,

The Son of Joseph Martin,

By BURCH, LITOWICH & ROYCE,

Their Solicitors,

Filed in the District Court on March 11, 1918.

Report of Special Master on Sale of Real Estate.

To the Honorable John C. Pollock, Judge of the District Court of the United States, District of Kansas, First Division:

I, F. L. Campbell, Special Master appointed for the purpose of making sale of the real estate decreed to be sold in the above entitled cause and of completing proceedings thereunder, a copy of the decree rendered herein being hereto attached and made a part of this report, respectfully report:

That by virtue of and in pursuance of the terms of said decree I caused public notice to be given that I would on Saturday the 20th day of April, 1918 at 2 o'clock P. M. of said date at the east door of the Salina County Court House in the city of Salina, Saline County, Kansas, offer at public sale, and sell to the highest and best bidder for cash the following described real estate, lands and tenements to-wit:

The North Half (N. $\frac{1}{2}$) of the Northeast quarter (N. E. $\frac{1}{4}$) of Section Twenty-two (22); also the South Half (S. $\frac{1}{2}$) of the Southeast quarter (S. E. $\frac{1}{4}$) of Section Fifteen (15); also the Southeast quarter (S. E. $\frac{1}{4}$) of the Southwest quarter (S. W. $\frac{1}{4}$) of Section Fifteen (15); also the Southeast quarter (S. E. $\frac{1}{4}$) of Section Eighteen (18). All lying and being in Township Fourteen (14) South, Range One (1) West of the Sixth Principal Meridian in the County of Saline, State of Kansas, containing Three Hundred and Sixty

(360) acres more or less according to the government survey thereof. Said notice was given by advertisement in the

Salina Sun, a weekly newspaper printed and published in the city of Salina, Saline County, Kansas for six consecutive weeks, the first publication being on Saturday March 16th, 1918 and each Saturday thereafter until and including April 20th, 1918, a copy of the said notice as advertised and published in said newspaper, together with proof of publication is hereto attached and made a part of this report.

I further report that at said time and place I announced I would offer said lands for sale in separate tracts and that thereafter would offer said land for sale as a whole, and that the highest aggregate amount or amounts bid for *sale* realty should prevail.

Thereupon I offered for sale the South Half (S. $\frac{1}{2}$) of the Southeast quarter (S. E. $\frac{1}{4}$), and the Southeast quarter (S. E. $\frac{1}{4}$) of the Southwest quarter (S. W. $\frac{1}{4}$) of Section Fifteen (15), Township Fourteen (14), Range One (1), containing One Hundred and Twenty (120) acres more or less, and declared the bid closed with the bid of Mrs. Julia Martin of Thirteen Thousand Two Hundred and no/100 (\$13,200.00) Dollars, her bid being the highest and best bid therefor.

I then offered for sale the Southeast quarter (S. E. $\frac{1}{4}$) of Section Eighteen (18), Township Fourteen (14), Range One (1), containing One Hundred Sixty (160) acres more or less and declared the bid closed with the bid of Mrs. Julia Martin of Eight Thousand Six Hundred Forty and no/100 (\$8640.00) Dollars, her bid being the highest and best bid therefor.

I then offered for sale the North Half ($\frac{1}{2}$) of the northeast quarter (N. E. $\frac{1}{4}$) of Section Twenty-two (22), township Fourteen (14), Range One (1), containing Eighty (80) acres more or less announcing that of the Twenty-two (22) acres in wheat on said land one-third ($\frac{1}{3}$) of the crop when harvested would go to the purchaser, the other two-thirds ($\frac{2}{3}$) of said wheat when harvested going to the now tenant, and declared the bid closed with the bid of Mrs. Julia Martin of Six Thousand Eight Hundred and no/100 (\$6,800.00) Dollars, her bid being the highest and best bid therefor.

I then offered for sale in one tract the South Half (S. $\frac{1}{2}$) of the Southeast quarter (S. E. $\frac{1}{4}$) and the Southeast quarter (S. E. $\frac{1}{4}$) of the Southwest quarter (S. W. $\frac{1}{4}$) of Section Fifteen (15), Township Fourteen (14), Range One (1); and the North Half ($\frac{1}{2}$) of the Northeast quarter (N. E. $\frac{1}{4}$) of Section Twenty-two (22), Township Fourteen (14), Range One (1), containing Two Hundred (200) acres more or less announcing the same provision relative to the growing wheat on Section Twenty-two (22) as heretofore announced and closed the bid with the bid of Mrs. Julia Martin of Twenty thousand Two Hundred and no/100 (\$20,200.00) Dollars, her bid being the highest and best bid therefor.

Thereupon I offered for sale in one tract all of the lands hereinbefore described and advertised to be sold herein, making the same announcement relative to the division of the growing wheat on Section Twenty-two (22) and sold the same to John Martin, Sr. for the sum of Thirty eight Thousand One Hundred and no/100 — (\$38,100.00), he being the highest and best bidder therefor.

I do further report that the total amount of said sale is Thirty eight Thousand One Hundred and no/100 (\$38,100.00) Dollars, that the purchaser, John Martin, Sr., immediately deposited with the Master his check for Five Thousand and no/100 (\$5,000.00) Dollars, and that your Master agreed with said purchaser that the balance of said purchase price, being Thirty three Thousand One Hundred and no/100 (\$33,100.00) Dollars, should be paid your Special Master immediately upon confirmation of said sale by this Court.

I further report that the cost of publishing notice of said sale is \$15.00, that the Master's incidental expenses are \$23.00.

I respectfully submit this report to this court and ask that the same may be approved, and that allowance be made me as Special Master for services in this cause performed and rendered, and for expenses necessarily incurred in making sale and such expenses as hereinbefore set forth amount to \$38.00.

F. L. CAMPBELL,
Special Master.

Affidavit of Publisher.

I, W. H. Johnson, being duly sworn, declare that I am the publisher of the Salina Sun, a weekly newspaper published at Salina, Saline County, Kansas, and of general circulation in said county,

and continuously and uninterruptedly published for 52 weeks prior to the first publication of the attached notice, and that the attached Sale Notice has been correctly published in the entire issue of said newspaper — consecutive weeks, said publication being on the following dates:

First Publication	March 16, 1918
Second "	" 23, 1918
Third "	" 30, 1918
Fourth "	April 6, 1918
Fifth "	" 13, 1918
Sixth "	" 20, 1918

W. H. JOHNSON.

Subscribed and sworn to before me this 20th day of April, 1918.

[SEAL.]

C. W. LYNN,

Notary Public for Saline County, Kansas.

Till January 30th, 1921.

Printer's Fee, \$15.00.

42 (First Published March 16, 1918.)

Sale Notice.

In the District Court of the United States for the District of Kansas,
First Division.

In Equity. No. 190-N.

BARTHOLOMEW SULLIVAN and MARGARET THOLEN, Complainants,
vs.

JOHN MARTIN, JOSEPH MARTIN, ANNA MARTIN, Now Known as Sister Mary Jerome; Jane Kidd, Sole Devises and Legatee under and by Virtue of the Last Will and Testament of Margaret Ingoldsbey, Deceased; Joseph Hall, James Hall, Ellen Hall, Mary Hall, William Hall, Gertrude Hall, Winifred Hall, Thomas Hall, Bernard J. Martin, Edward F. Martin, Thomas C. Martin, Patrick H. Martin, Leo R. Martin, J. Vincent Martin, Michael H. Martin, Rachel I. Martin, Mary A. Standard, Anne F. Martin, Julia F. Martin, Julia Martin, Guardian of Michael H. Martin and Julia F. Martin, Minors; Joseph Martin, Administrator of the Estate of Peter Martin, Deceased, and John Martin, the Son of Joseph Martin, Defendants.

Public notice is hereby given that under and by virtue of a decree of the District Court of the United States for the District of Kansas, First Division, filed and recorded in the above entitled suit, I will, on Saturday, the 20th day of April, 1918, at 2 o'clock p. m., on said date, sell at public sale, at auction, according to law, to the highest

and best bidder, for cash in hand, without appraisement, at the east door of the Saline county court house, in the City of Salina, County of Saline, and State of Kansas, the following described real estate, together with the tenements, hereditaments and appurtenances thereunto, belonging, to wit:

"The north half of the northeast quarter of section twenty-two; also the south half of the southeast quarter of section fifteen; also the southeast quarter of the southwest quarter of section fifteen; also the southeast quarter of section eighteen, all lying and being in township fourteen, south, range one, west, of the Sixth principal meridian, in the county of Saline and State of Kansas, containing three hundred sixty acres, more or less, according to the government survey thereof."

Said real estate will be offered for sale and sold as follows:

First. The realty situate in each section will be offered for sale separately.

Second. The whole of said real estate will be offered for sale in its entirety, and thereupon the highest aggregate amount or amounts bid for said realty shall prevail.

A good and sufficient deed or deeds will be executed to the purchaser or purchasers immediately upon confirmation of said sale or sales by said court.

F. L. CAMPBELL,
Special Master.

Copy of Decree attached to Master's Report, the same as set out in full on page 31 and not here repeated.

Filed in the District Court on April 22, 1918.

43 *Motion for Confirmation of Sale.*

Come now the above named complainants and move the Court to confirm the sale which was made by F. L. Campbell, Esquire, Special Master in Chancery for the District of Kansas, First Division, in pursuance of the decree rendered in this cause on the 11th day of March, 1918, and the report of said Master of his actions thereon filed in this Court on the — day of April, 1918.

GEO. F. BEATTY,
Solicitor for Complainants.

Filed in the District Court on April 23, 1918.

Order Confirming Sale.

The report of F. L. Campbell, Special Master in Chancery of this court in this cause, having been filed in this court on the 22nd day of April, 1918, showing that on the 20th day of April, 1918, at the hour of two o'clock in the afternoon of that day, pursuant to Notice theretofore duly given, has sold at public auction to John Martin of

Solomon, Saline County, Kansas, at and for the sum of Thirty-eight thousand one hundred (\$38,100.00) Dollars, all of the property specifically mentioned and described in the Amended Bill of Complaint in this cause, in the decree hereinbefore rendered and the Report of said Master filed herein on the — day of April, 1918; and

Now, on this 23rd day of April, 1918, the Court having fully considered said report and it appearing that the said sale was duly and regularly made by said Master in accordance with law and the course and practice of this Court and in the manner provided in said decree, the Court being duly advised in the premises, and it
44 further appearing that no objections have been filed to the approval of said Report and the confirmation of said sale.

Wherefore, it is by the Court ordered, adjudged and decreed that the said report of the said Master, and the said sale by him made as set forth in his said report, ~~be~~, and the same is, hereby approved and confirmed; and it is further ordered, adjudged and decreed that proper and legal conveyance of all of said real estate and the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining are hereby directed to be executed to the said purchasers in the manner and by the said Special Master as provided for by the decree of this Court made and entered herein on the 11th day of March, 1918.

Witness the Honorable John C. Pollock, Judge of said Court at Kansas City in said District, this 23rd day of April, 1918. It is further ordered jurisdiction of this cause is expressly reserved for the purpose of fixing the compensation of the Special Master and solicitors for the parties, ordering payment made, distributing the purchase price and to make any and all further orders herein as equity and justice may demand.

JOHN C. POLLOCK, *Judge.*

•

Approved:

BARTHOLOMEW SULLIVAN &
MARGARET THOLEN,

Complainants, and

JOHN MARTIN,
JOSEPH HALL,
JAMES HALL,
ELLEN HALL,
MARY HALL,
THOMAS HALL,
GERTRUDE HALL,
WINNIFRED HALL,
WILLIAM HALL,
BERNARD J. MARTIN,
EDWARD F. MARTIN,
THOMAS C. MARTIN,
J. VINCENT MARTIN,
LEO R. MARTIN,
MICHAEL H. MARTIN,
RACHEL I. MARTIN,
MARY A. STANDARD,
ANNE F. MARTIN,
JULIA F. MARTIN,
JULIA MARTIN,

Guardian ad Litem,

By GEO. S. BEATTY,

Their Solicitor,

JOSEPH MARTIN,
ANNA MARTIN,

Now Known as Sister Mary Jerome;

PATRICK H. MARTIN,
JOSEPH MARTIN,

Administrator of the Estate of

Peter Martin, Deceased, and

JOHN MARTIN,

The Son of Joseph Martin,

By BURCH, LITOWICH & ROYCE,

Their Solicitors,

Filed in the District Court on April 23, 1918.

Application for Order of Distribution.

Now come the above named complainants, appearing by their counsel, Geo. F. Beatty, the said defendants, other than defendant, Jane Kidd, appearing by their respective counsel, Burch, Litowich & Royce, and Geo. F. Beatty, and show to the court,

That heretofore and on the 11th day of March, 1918, at Wichita, in said District, a decree was made and entered in the above entitled cause, finding and determining the rights and interest of the parties

hereto, to the real estate in controversy in this suit, and ordering said real estate sold:

That pursuant to said decree, a sale of said real estate has been made and since said sale, the report of the Special Master heretofore appointed has been in all things approved and said sale confirmed.

Wherefore, complainants pray that an order be made and entered herein for the distribution of the proceeds, Thirty-eight thousand one hundred dollars (\$38,100.00) realized from the sale of said real estate, in the manner following: (1) in the payment of costs of this suit, including compensation and expenses of respective counsel, and compensation and expenses of the Special Master heretofore appointed, (2) in the payment of all taxes and legal assessments due and outstanding against said real estate, (3) that the balance then remaining be distributed among the parties entitled thereto as their respective interests have been heretofore determined in said decree, and for such other and further orders in the premises as may be necessary.

GEO. F. BEATTY,
Solicitor for Complainants.

Filed in the District Court on May 13, 1918.

46 *Order Making Allowances and for Disbursement of Proceeds
of Master's Sale.*

Now on this day came the complainants above named, appearing by their solicitor, Geo. F. Beatty, and also came the above named defendants, appearing by Burch, Litowich & Royce and Geo. F. Beatty, their respective solicitors, and present their application for an order for distribution of the proceeds realized from the sale of the real estate heretofore made by F. L. Campbell, Special Master in Chancery, and the court having read said application and being well advised in the premises, no adverse interests appearing, find

That an order of distribution should be made and it is thereupon

Ordered, that the following sums be, and the same hereby are allowed as full compensation and expenses for services rendered by the Special Master and respective solicitors in this cause, and that the same be taxed as costs herein, to-wit:

(1) F. L. Campbell, Special Master, compensation eight hundred (\$800.00) Dollars, expenses — dollars.

(2) Geo. F. Beatty, solicitor for complainants and various defendants, compensation twenty five hundred dollars, expenses — dollars.

(3) Burch, Litowich & Royce, solicitors for various defendants, compensation Fifteen Hundred Dollars, expenses — dollars.

And that the sum remaining be disbursed: (1) in the payment of all other costs due and taxable in this proceeding including cost of revenue stamps required to be placed upon the deed of the Special Master to the property sold by him, (2) in the payment of all taxes and legal assessments due and outstanding, against said real estate.

(3) and that of the sum then remaining, a one seventh be retained by said Special Master, subject to the further order of the Court and that the balance thereof be distributed among the parties to this cause, complainant and defendant, in this action, to-wit:

Bartholomew Sullivan and Margaret Tholen, a one twelfth ($1/12$) each,

John Martin, Joseph Martin and Anna Martin, a one sixth ($1/6$) each,

Joseph Martin, purchaser of the undivided interest of Patrick H. Martin, defendant, a one ($1/66$) sixty-sixth,

Bernard J. Martin, Edward F. Martin, Leo R. Martin, J. Vincent Martin, Michael H. Martin, Thomas C. Martin, Rachel I. Martin, Mary A. Standard, Anne F. Martin, and Julia F. Martin, a one ($1/66$) sixty-sixth each,

Joseph Hall, James Hall, Ellen Hall, Mary Hall, Thomas Hall, Winifred Hall, Gertrude Hall and William Hall, a forty ($1/48$) eighth each,

And it is further ordered that the said Special Master issue proper vouchers in payment of the interests as above set forth and the Court hereby retains jurisdiction of this cause for the purpose of such further and other orders in the premises as may appear equitable and just.

Witness the Honorable John C. Pollock, Judge of said Court, at Salina, in said District, this 13th day of May, 1918.

JOHN C. POLLOCK, *Judge*.

O. K.

BURCH, LITOWICH & BOYCE,

Atty. for Joseph Martin et al.

GEO. F. BEATTY,

*Atty. for Bartholomew v. Sullivan et al., and
John Martin et al.*

Filed in the District Court on May 13, 1918.

48

Petition for Rehearing.

Comes now defendant Jane Kidd in the above entitled cause and prays that the decree heretofore entered herein be set aside and that a rehearing of said cause be granted for the following reasons:

1. Because the court did not have jurisdiction over this defendant at the time of the rendition and entry of the decree herein.

2. Because the court did not at the date of the rendition and entry of the decree herein have jurisdiction over the interest of this defendant or jurisdiction to adjudicate that this defendant had no interest in the real estate described in complainants' amended bill of complaint.

3. Because the purported service of subpoena upon this defendant was without the United States and in the Dominion of Canada.

4. Because the decree in this cause excluded this defendant from all right, title or interest in the property described in complainants' amended bill of complaint and the proceeds of the sale thereof when such ruling and decree was against all the evidence in the case.

5. Because under all the evidence in the case this defendant is entitled to one-seventh interest in the property described in complainants' amended bill of complaint.

6. Because the decree in this cause excluded this defendant from all right, title and interest in the property described in complainants' amended bill of complaint and the proceeds of the sale thereof for the reason either that this defendant and one Margaret Ingoldsbys referred to in complainants' amended bill of complaint were or one of them was at the time in question a citizen and resident of the Dominion of Canada, when such ruling is and was contrary to the treaty relations existing at all the times in question between
49 the United States and the Dominion of Canada.

Wherefore this defendant prays the court to set aside the decree entered in this cause and grant her a rehearing therein with leave to appear and defend.

O. H. DEAN,
W. D. McLEOD,
H. M. LANGWORTHY,
ROY R. THOMSON,

Attorneys for Defendant Jane Kidd.

Filed in the District Court on June 18, 1918.

Application for Leave to File Intervening Petition.

Now on this day comes Jane Kidd, by her solicitors, Warner, Dean, McLeod & Langworthy, and respectfully prays that she be granted leave to file an intervening petition praying the court that she be allowed to participate in the net proceeds of the sale of the real estate described in the amended bill of complaint herein as the sole devisee of Margaret Ingoldsbys, who was a full sister of Peter Martin, deceased, referred to in said bill of complaint.

And said Warner, Dean, McLeod & Langworthy, as solicitors for said Jane Kidd, further represent and state to the court that they were employed to represent said Jane Kidd through the Honorable C. L. N. Pearson, British Consul, at St. Louis, Missouri, and that the said The Honorable C. L. N. Pearson, as such British Consul, has requested them to pray this Honorable court on behalf of Jane Kidd that if in the judgment of this court it be proper, she be given further
50 opportunity to present to this court the question of the right of inheritance of Margaret Ingoldsbys, now deceased, referred to in the bill of complaint herein, and of said Jane Kidd, as legatee and devisee of the said Margaret Ingoldsbys, and upon the question of the right of the said Jane Kidd as such legatee and devisee to share in the net proceeds of the sale of the real estate referred to in the bill of complaint herein, pursuant to the decrees of this court heretofore entered herein.

And said Jane Kidd prays for such other and further orders as to the court may seem equitable and just.

JANE KIDD,
By WARNER, DEAN, McLEOD &
LANGWORTHY,
ROY B. THOMSON,
Her Solicitors.

Filed in the District Court on June 19, 1918.

*Order Granting Leave to File Intervening Petition and Order on
Intervening Petition of Jane Kidd.*

Now on this day the above entitled cause came on to be further heard, the complainants and various defendants appearing by their solicitor George F. Beatty and all the remaining defendants, excepting Jane Kidd, appearing by their solicitors Burch, Litowich & Royce, and the defendant Jane Kidd appearing by her solicitors Warner, Dean, McLeod and Langworthy and Roy B. Thomson, and thereupon the said Jane Kidd through her solicitors presented to the court her petition for rehearing heretofore filed herein and also her application for leave to intervene and file her intervening petition praying that she be allowed to share in the net proceeds of the sale of the real estate described in the amended bill of complaint herein, as the sole devisee of Margaret Ingoldsbly, deceased, who was a sister of said Peter Martin, deceased, and it appearing to the court that the Honorable C. N. M. Pearson, British Consul, at St. Louis, has requested that the said Jane Kidd be permitted to be heard further by

51 this court upon the question of the right of inheritance of the said Margaret Ingoldsbly now deceased, and of said Jane Kidd as the legatee and devisee of the said Margaret Ingoldsbly and upon the question of the right of said Jane Kidd as such legatee and devisee to share in the net proceeds of the sale of said real estate pursuant to the decree of this court heretofore entered herein, and it appearing to the court that it would be right, just and equitable that said Jane Kidd should be further heard upon such questions.

It is by the Court ordered that said Jane Kidd be and she is hereby permitted to file such intervening petition and the same is ordered filed as of this date, to which order, ruling and judgment of the court said George F. Beatty and said Burch, Litowich & Royce on behalf of their respective clients duly objected and excepted at the time.

Thereupon said petition for rehearing and said intervening petition of said Jane Kidd praying for an order permitting her to share in the distribution of the net proceeds of the sale of said real estate, as the sole legatee and devisee of Margaret Ingoldsbly, deceased, who was a sister of said Peter Martin, deceased, came regularly on for hearing before the court and the court having heard the arguments of counsel and being fully advised in the premises, the court finds that the said Jane Kidd is the sole devisee of Margaret Ingoldsbly, who was a sister of Peter Martin, deceased, and that the said Margaret Ingoldsbly died on or about the 28th day of July, 1916, after the death of said Peter Martin, and that under the laws and treaties in

force and effect at said times the said Margaret Ingoldsbey was entitled to inherit from the said Peter Martin as one of his heirs a one-seventh interest in and to the real estate referred to in the bill of complaint herein, and that the said Jane Kidd as the sole legatee and devisee of said Margaret Ingoldsbey is entitled to receive the share in the net proceeds of the sale of said real estate, which said Margaret Ingoldsbey would have received if living; it is therefore by the court considered, ordered, adjudged and decreed as follows, to-wit:

52 1. That after the payment of the fees, expenses, costs and taxes provided for under and by virtue of the order of this court heretofore entered herein on the 13th day of May, 1918, the said F. L. Campbell, Special Master, herein, be and he is hereby ordered and directed to pay to Warner, Dean, McLeod & Langworthy, solicitors for Jane Kidd, one-seventh of the proceeds of the sale of said real estate, then remaining in his hands, which said sum was by said order of court directed to be retained by said Special Master subject to the future order of this court.

2. That complainants and defendants other than said Jane Kidd are given ninety days' time from this date within which to perfect an appeal and give a supersedeas bond in the sum of \$25,000.00 as provided by law, and that during said period of ninety days said special master be and he is hereby ordered and directed to place said sum of money so ordered paid to said solicitors of said Jane Kidd on deposit at the Merchants National Bank at Topeka, Kansas, at the highest rate of interest obtainable and at the end of said period of ninety days, if said appeal has not been perfected and said supersedeas bond given as required by law, then said sum of money, together with interest accrued thereon shall be paid by said Special Master to said solicitors for said Jane Kidd as aforesaid, to all of which adverse rulings of the court counsel for complainants and all of the defendants except Jane Kidd object and except, including the rulings of the court as to retaining jurisdiction over one seventh of the net proceeds of the sale of said real estate and the rights of the defendant, Jane Kidd, to file said intervening petition.

Witness the Honorable John C. Pollock, Judge of said Court at Kansas City, in said District this 19th day of June, 1918.

JOHN C. POLLOCK, *Judge*.

O. K.

BURCH, LITOWICH & BOYCE.

GEO. F. BEATTY.

WARNER, DEAN, McLEOD & LANGWORTHY.

Filed in the District Court on June 19, 1918.

53

Intervening Petition.

Now comes Jane Kidd, and respectfully represents and states to the court as follows:

1. That at the times mentioned in the Bill of Complaint herein, she was, and now is, a resident and citizen of the Dominion of Can-

ada, and a subject of the United Kingdom of Great Britain and Ireland.

2. That at the times referred to in said Bill of Complaint, Margaret Ingoldsby was a resident and citizen of the Dominion of Canada, and a subject of the United Kingdom of Great Britain; that said Margaret Ingoldsby was a full sister of deceased, Peter Martin, referred to in said Bill of Complaint; that the said Margaret Ingoldsby, died on or about July 28th, 1916, and the said Jane Kidd was, and is, the sole legatee and devisee of the said Margaret Ingoldsby.

3. That under and by virtue of the laws and treaties in force and effect at, before and since the time of the death of the said Peter Martin, and at, before and since the time of the death of the said Margaret Ingoldsby, the said Margaret Ingoldsby was and is entitled to and did inherit a one-seventh interest in and to said real estate described in said Bill of Complaint as one of the heirs of the said Peter Martin, and said Jane Kidd as the sole legatee and devisee of the said Margaret Ingoldsby, became and was and is entitled to receive the share of the said Margaret Ingoldsby in and to the said real estate so owned by the said Peter Martin, and is now entitled to receive the share of the net proceeds derived from the sale of said real estate, which the said Margaret Ingoldsby would have been entitled to receive if living.

4. That owing to serious illness, said Jane Kidd was unable to be present or to arrange for the presentation to this court of her rights in the premises, at the times of the orders heretofore made and entered in this cause.

5. That by virtue of the orders heretofore entered herein, 54 this court has full and complete jurisdiction to ascertain, adjudge and decree the right and interest of the said Jane Kidd in and to the net proceeds of the sale of said real estate, sold pursuant to the orders of court heretofore entered herein.

Wherefore, said Jane Kidd prays that an order be entered herein adjudging and decreeing that said Jane Kidd is entitled to a one-seventh interest in and to the net proceeds of the sale of said real estate, and that the special master herein be ordered and directed to pay to said Jane Kidd a one-seventh interest of said net proceeds, and said Jane Kidd prays for such other and further orders as to the court may be just and equitable in the premises.

JANE KIDD,

By WARNER, DEAN, McLEOD &
LANGWORTHY,
ROY B. THOMSON,

Her Solicitors.

Filed in the District Court on June 19, 1918.

Assignment of Errors.

Now come the complainants and defendants in the above entitled cause, other than said defendant, Jane Kidd, and file the following

Assignments of Error upon which they will rely upon their prosecution of the appeal in the above entitled cause from the holding and decree made by this Honorable Court upon the 19th day of June A. D. 1918.

I.

That the United States District Court for the District of Kansas, First Division, erred in granting the application of the said defendant, Jane Kidd, for leave to *trial* her intervening petition in said cause.

II.

That the United States District Court for the District of Kansas, First Division, erred in adjudging decreeing said defendant Jane Kidd to be entitled, under the provisions of the existing treaties between the United States of America and the Kingdom of
 55 Great Britain and Ireland, to a one seventh ($1/7$) of the net proceeds derived from the proceeds of the sale of the real estate in the Amended Bill of Complaint, herein described, and that the construction placed upon said treaties by said Court is erroneous.

Wherefore, the above named complainants and defendants other than said defendant, Jane Kidd, humbly pray that said Supreme Court of the United States reverse said judgment, decree order and that said District Court of the United States, District of Kansas, First Division, be ordered to enter a decree reversing the decision of the lower Court in said cause.

GEO. F. BEATTY,

BURCH, LITOWICH AND ROYCE,

Solicitors for Appellants.

Filed in the District Court on Sept. 17, 1918.

Petition for Appeal.

To the Honorable the Judges of the United States District Court for the District of Kansas:

The above named complainants and defendants other than said Jane Kidd, feeling themselves aggrieved by the decree made and entered in this cause on the 19th day of June, A. D. 1918, do hereby appeal from said order, decree, to the Supreme Court of the United States, for the reasons specified in the Assignments of Error which is filed herewith, and they pray that their appeal be allowed and that Citation issued as provided by law, and desiring to supersede the execution of the decree, petitioners here tender bond in the amount required by the provisions of said order for such purpose and pray that with the allowance of the appeal a supersedeas be issued, and that a transcript of the records, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the Su-

preme Court of the United States, sitting at the City of Washington, in the District of Columbia.

And your petitioners further pray that the proper order touching the security to be required and the supersedeas to be issued to perfect their appeal be made.

GEO. F. BEATTY AND
BURCH, LITOWICH AND ROYCE,
Solicitors for Petitioners.

The above petition is hereby granted and the appeal allowed upon giving bond conditioned as required by law, in the sum of Two Thousand Five Hundred (\$2500.00) Dollars, the same to act as a supersedeas bond and also as a bond for costs and damages on appeal.

Dated this 17th day of September, A. D. 1918.

JOHN C. POLLOCK, *Judge.*

Filed in the District Court on September 17, 1918.

Bond on Appeal.

Know All Men by These Presents:

That we, Bartholomew Sullivan, Margaret Tholen, John Martin, Joseph Martin, Anna Martin, now known as Sister Mary Jerome, Joseph Hall, James Hall, Ellen Hall, Mary Hall, William Hall, Gertrude Hall, Winnifred Hall, Thomas Hall, Bernard J. Martin, Edward F. Martin, Thomas C. Martin, Leo R. Martin, J. Vincent Martin, Michael H. Martin, Rachel I. Martin, Mary A. Standart, Anne F. Martin, Julia F. Martin, as principals, and J. P. Beems and William Sullivan of Salina, Kansas, as sureties, are firmly held and bound unto Jane Kidd, in the full and just sum of Two Thousand Five Hundred (\$2500.00) Dollars, to be paid to the said Jane Kidd, her heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators and successors, jointly and severally by these presents. Scaled with our seals and dated this 16th day of September, in the year of our Lord one thousand nine hundred and eighteen.

Whereas, lately at the June term, A. D. 1918, of the District Court of the United States for the First Division of the Judicial District of Kansas, in a suit pending in the said court between Bartholomew Sullivan, and Margaret Tholen, complainants, vs. John Martin, Joseph Martin, Anna Martin, now known as Sister Mary Jerome, Jane Kidd, sole devisee and legatee under and by virtue of the Last Will and Testament of Margaret Ingoldshy, Deceased, Joseph Hall, James Hall, Ellen Hall, Mary Hall, William Hall, Gertrude Hall, Winnifred Hall, Thomas Hall, Bernard J. Martin, Edward F. Martin, Thomas C. Martin, Patrick H. Martin, Leo R. Martin, J. Vincent Martin, Michael H. Martin, Rachel I. Martin, Mary A. Standart, Anne F. Martin, Julia F. Martin, Julia Martin, guardian of Michael H. Martin and Julia F. Martin, minors, Joseph Martin,

administrator of the estate of Peter Martin, deceased, and John Martin the son of Joseph Martin, defendants, judgment was rendered in favor of said Jane Kidd and against the complainants and defendants, other than the said Jane Kidd, herein, and the said complainants and defendants, other than the said Jane Kidd, have obtained an appeal of the said Court to reverse the judgment in the aforesaid suit and the citation directed to the said Jane Kidd citing and admonishing her to be and appear in the Supreme Court of the United States at the City of Washington, District of Columbia, thirty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said Bartholomew Sullivan, Margaret Tholen, John Martin, Joseph Martin, Anna Martin, now known as Sister Mary Jerome, Joseph Hall, James Hall, Ellen Hall, Mary Hall, William Hall, Gertrude Hall, Winnifred Hall, Thomas Hall, Bernard J. Martin, Edward F. Martin, Thomas C. Martin, Leo R. Martin, J. Vincent Martin, Michael H. Martin, Rachel I. Martin, Mary A. Standart, Anne F. Martin, and Julia F. Martin, shall prosecute said appeal to affect and
 58 answer all damages and costs if the said parties last mentioned fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

Scaled and delivered in presence of

BARTHOLOMEW SULLIVAN, [SEAL.]
 MARGARET THOLEN,
 JOHN MARTIN,
 JOSEPH HALL,
 JAMES HALL,
 ELLEN HALL,
 MARY HALL,
 WILLIAM HALL,
 GERTRUDE HALL,
 WINNIFRED HALL,
 THOMAS HALL, [SEAL.]
 BERNARD J. MARTIN,
 EDWARD F. MARTIN,
 THOMAS C. MARTIN,
 LEO R. MARTIN,
 J. VINCENT MARTIN,
 MICHAEL H. MARTIN, [SEAL.]
 RACHEL I. MARTIN,
 MARY A. STANDART,
 ANNE F. MARTIN AND
 JULIA F. MARTIN,
 GEO. F. BEATTY, *Solicitor*,
 JOSEPH MARTIN AND
 ANNA MARTIN,

Now Known as Sister Mary Jerome,
 BURCH, LITOWICH AND ROYCE,

Solicitors,

J. P. BEEMS,
 WILLIAM SULLIVAN.

The above Bond is good.

GEO. F. BEATTY, *Solicitor.*
BURCH, LITOWICH AND ROYCE.

Approved.

JOHN C. POLLOCK, *Judge.*

Filed in the District Court on September 17, 1918.

59 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, F. L. Campbell, Clerk of the District Court of the United States of America for the District of Kansas, do hereby certify the within and foregoing to be true, full and correct copies of the *the* record and proceedings in said court in case No. 190-N, entitled Bartholomew Sullivan et al., vs. John Martin et al.

I further certify the Original Citation is attached hereto and returned herewith.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Topeka, in said District of Kansas, this 8th day of January, 1919.

[Seal of District Court U. S., District of Kansas, 1861.]

F. L. CAMPBELL, *Clerk.*

Endorsed on cover: File No. 26888. Kansas D. C. U. S. Term No. 802. Bartholomew Sullivan, Margaret Tholen, John Martin, et al., appellants, vs. Jane Kidd. Filed January 13th, 1919. File No. 26888.

(26,888)

APR 17 1920

JAMES D. MAHER,
CLERK.

In the SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918

No.  65

**BARTHOLOMEW SULLIVAN, MARGARET
THOLEN, JOHN MARTIN, ET AL.,**

Appellants,

vs.

JANE KIDD.

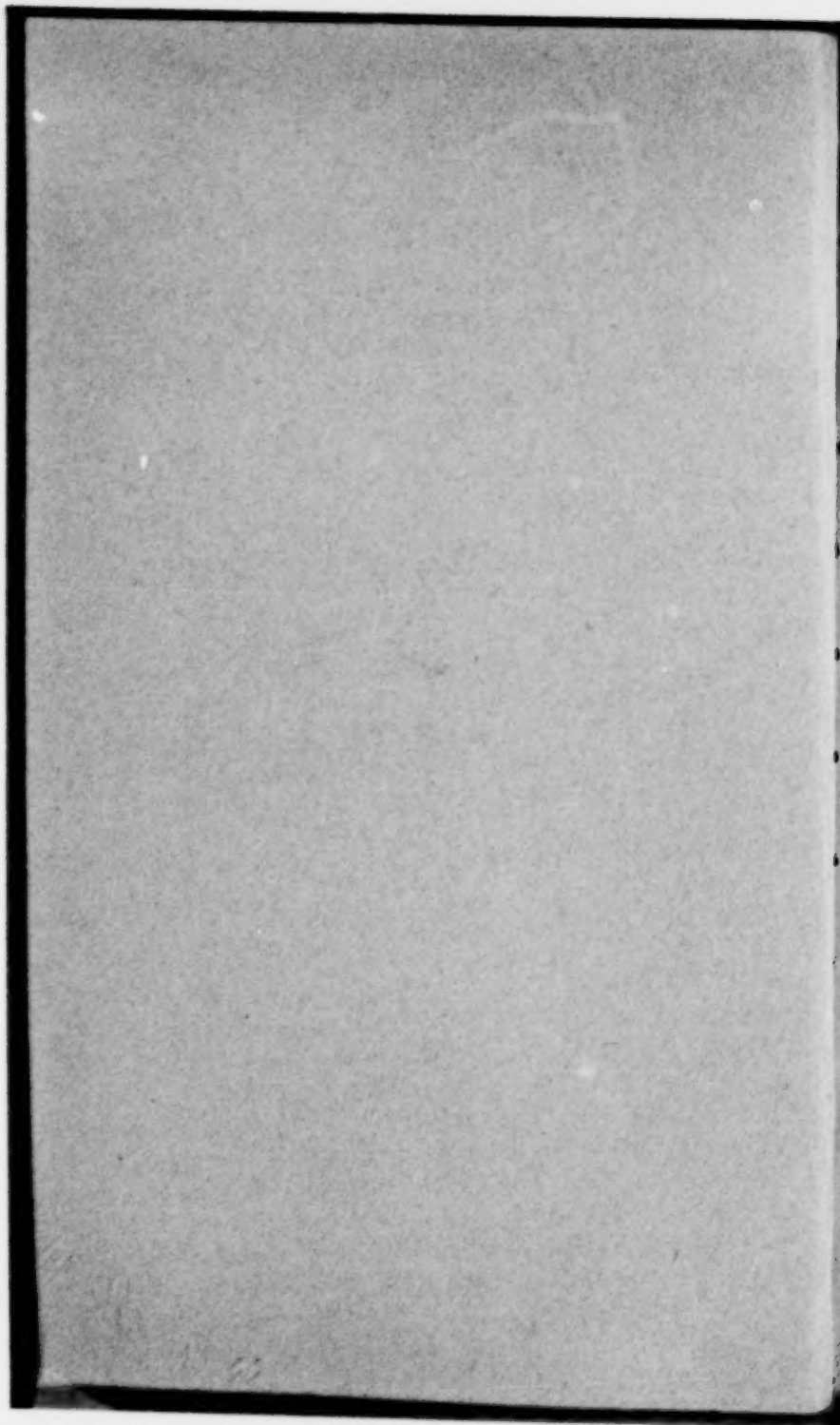
**APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF KANSAS.**

FILED JANUARY 13, 1919

Statement, Brief and Argument for Plaintiffs in Error.

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(26,888)

In the SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1918

No. 802

BARTHOLOMEW SULLIVAN, MARGARET
THOLEN, JOHN MARTIN, ET AL.,
Appellants,

vs.

JANE KIDD.

APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF KANSAS.

Statement, Brief and Argument for Plaintiffs in Error.

Statement.

This is an action brought in the District Court of the United States for the District of Kansas for the partition of certain real estate situate in Saline County, Kansas, which was the property of one Peter Martin, formerly of Saline County, Kansas. All of the parties to the action, the complainants and defendants being brothers and sisters, nephews and nieces of Peter Martin, the said Peter Martin being, at the time of his death, a widower who died intestate, unmarried and without issue. (Tr. 2-3). The bill of complaint (Tr. 2-5) contains a statement of all the facts.

Jane Kidd, defendant in error, a non-resident alien of the United States and State of Kansas, was named as the sole devisee and legatee of Margaret Ingoldsby, who, at the time of her death, upon July 28, 1916, and at the time of the death of the said Peter Martin, was a citizen and resident of the Township of Sheffield, County of Lennox-Addington, Province of Ontario, Dominion of Canada. She was a sister of Peter Martin. The bill of complaint was filed in the District Court on March 12, 1917, (Tr. 5). Upon April 23, 1917, Jane Kidd, by H. C. Tobey, her solicitor, entered her appearance and waived the service of a subpoena. Upon July 25, 1917, the complainants filed an amended bill of complaint, which appears in the transcript at pages 8, 9, 10, and 11. Upon July 27, 1917, an order was made for service upon Jane Kidd, which order provided that the said Jane Kidd should, within twenty days from the date of service, appear, answer, demurr, or otherwise plead to said bill. Upon August 13, 1917, the return of the service of the order was filed (Tr. 13), showing personal service upon the defendant, Jane Kidd, of a certified copy of the order and a certified copy of the amended bill of complaint, by delivering the same to her personally at her home in the Township of Sheffield, County of Lennox-Addington, Province of Ontario, Dominion of Canada.

Jane Kidd entered her appearance as above set forth, and after being served with a copy of the amended bill of complaint did not answer, demurr, or otherwise plead to said bill and made default. The entry of appearance was dated April 21, 1917, and filed April 23, 1917. The service of a certified copy of the order of service and a certified copy of the amended bill of complaint was made upon August 6, 1917. Upon November 22, 1917, an application for order taking bill as confessed was filed (Tr. 19). Upon March 11, 1918, at Wichita, Kansas, and at the March term of said court, (Tr. 20-23) a decree was entered, in which decree the court found that the said Jane Kidd had failed to answer or otherwise plead to the

amended bill; that upon November 22, 1917, an order taking said bill as confessed was entered in the order book; that more than thirty days had elapsed since the entry of the order taking said amended bill as confessed; that no proceedings had been taken or had by Jane Kidd since said order taking said amended bill as confessed, and that said Jane Kidd was in default; the court then made a finding as to the interest of each of the parties in the property and further found and decreed that the defendant, Jane Kidd, was without any right, title, estate, or interest in, to, or upon said real estate or any part thereof. The fact that the decree was made at Wichita is shown in the application for order of distribution (Tr. 30).

It was further ordered that the special master in chancery sell said real estate. The real estate was sold, the report of the special master in chancery being in the transcript at pages 25 and 26, the same having been filed upon April 22, 1918.

Upon June 18, 1918, solicitors for Jane Kidd filed a petition for rehearing. (Tr. 32-33). Application for leave to file intervening petition was filed upon June 19, 1918, and upon the same day at Kansas City, Kansas, and at another term, the court made an order granting leave to file intervening petition and an order on intervening petition of Jane Kidd (Tr. 34-35), in which last order the court found that under the laws and treaties in force at the times above mentioned and during the pendency of the action, Margaret Ingoldsby was entitled to inherit from Peter Martin a one-seventh interest in and to said real estate; that the said Jane Kidd, as the sole legatee and devisee of the said Margaret Ingoldsby was entitled to receive the share of the net proceeds of the sale of said real estate which the said Margaret Ingoldsby would have received if living; and the court further ordered that the special master be ordered and directed to pay to Warner, Dean, McLeod and Langworthy, solicitors for Jane Kidd, one-seventh of the proceeds of the sale of said

real estate then remaining in his hands. (Tr. 34-35). All of the parties to the action, with the exception of Jane Kidd, petitioned for appeal (Tr. 37-38) and make the assignments of error which appear in the transcript at pages 36 and 37.

It is the contention of the plaintiffs in error that the court erred in granting the application of the defendant, Jane Kidd, to file her intervening petition for the following reasons:

First, she was more than one year in default after the entry of her appearance by her solicitor, and had been in default from August 1917, until the 19th day of June, 1918, after the service of the order for service with the certified copy of the amended bill of complaint upon her, and that the decree was set aside at a time subsequent to the term at which it was made.

Second, in no event, under the provision of the existing treaties with the United States of America and the Kingdom of Great Britain, was the defendant Jane Kidd entitled to the proceeds of the sale of the real estate set forth in the amended bill of the plaintiff; and that the construction of the court placed upon the treaties is erroneous.

Argument.

The defendant, Jane Kidd, entered her appearance by her solicitor in this case in the District Court in April 1917. After the entry of her appearance by her solicitor she did not file any answer, demurrer, or otherwise plead to the bill of the complainants. Neither the application to file an intervening petition or the intervening petition deny the authority or the right of her solicitors to enter her appearance. The presumption is that he had the authority.

There is nothing in the record to rebut that presumption. If he had that authority she is then bound by his actions, is in default and bound by the decree. Later, in August 1917, she was served personally with a copy of the order for service and a certified copy of the amended bill of complaint. The service was made in the manner directed and ordered by the Judge. The same provided that she should appear, answer, demurr, or otherwise plead to said bill within twenty days. She did not do so. Her time was up according to said order upon August 26, 1917. Not until November 22, 1917, was an application for order taking bill as confessed filed and an order taking said bill as confessed was entered in the order book; and over thirty days intervened before the decree was entered. In fact the decree was not entered barring the said Jane Kidd until March 11, 1918, or more than four months after the order was entered in the order book. She defaulted in every particular.

The application for leave to file the intervening petition was not filed until June 1918, at Kansas City, Kansas. The order granting leave to file intervening petition was made on the 19th of June, 1918. The decree adjudicating that Jane Kidd had no interest in the premises was made and filed upon March 11, 1917, at Wichita during the March term. Consequently, the Court did not have authority to grant leave to file the intervening petition.

"The court below cannot grant a rehearing of an equity case after the term in which the final decree was entered."

Bank of Lewisburg v. Sheffey, 144 U. S. 445,
35 L. ED., 493.

The defendant, Jane Kidd, does not make this application. It is made on her behalf by the British Consul. It is unwarranted under the facts in this case. The appearance of a consul of a foreign country on behalf of an

alien is authorized in the event the alien has not been notified or cannot be notified; then it is proper to notify the consul so that he may appear and protect any rights the subject of his country may have; the appearance of the consul is unwarranted.

The intervening petition recites as an excuse for failure of Jane Kidd to plead or appear that she was ill but that does not supply any excuse why her solicitor failed to appear after he entered her appearance; we also call attention to the fact that the application is unverified, which we think is not within the rules.

Rights of a Canadian to Inherit Land in Kansas.

The defendant in error in this case is an alien. Any rights of inheritance which she may have come to her by virtue of being a legatee and devisee of a sister of the deceased. The sister was an alien who died subsequent to Peter Martin, the owner of the property. Jane Kidd is a citizen of Canada and the party through whom she inherits was a citizen and a resident of Canada in her lifetime. Under the common law, an alien cannot inherit. In the absence of the treaty, the right of inheritance is governed by statute.

Blythe v. Kinckley, 180 U. S. 333, 45 L. Ed., 557;
Jones v. Jones, 234 U. S. 615, 58 L. Ed., 1500.

Kansas has not a statute which permits an alien to inherit. The manner in which the land of Peter Martin descends depends upon the statute of descents and distributions of the State of Kansas, and that statute is applicable only to those who are entitled to take under the existing laws of Kansas. The law of Kansas is applicable in this case. Jane Kidd, a citizen of Canada, is claiming through the right of inheritance, from another citizen of Canada, and under this state of facts, even though Jane Kidd were a resident of Kansas, she could not take an in-

terest in this property because she is the legatee of an alien.

"In the absence of a governing treaty the repeal of the constitutional provision that no distinction shall be made between citizens and aliens in the inheritance, enjoyment, and descent of property and the adoption in its place of the provision that the rights of aliens in reference to the inheritance, enjoyment and descent of property shall be regulated by law without enacting a statute regulating the inheritance of property by aliens revives and reinstates the common-law rule that an alien cannot inherit from a deceased citizen." * * * * *

"The intestate, who was the owner of land in Kansas, died without wife or issue, his father and mother having previously died. Among his surviving brothers and sisters some were aliens and some citizens of the United States. One of his sisters who was an alien and alive when he died had two children who were citizens of the United States. Held, that the sister, being an alien, could not inherit a share of the estate, and that after her death her children, although citizens, were incapable of inheriting through her."

Johnson v. Olsom, 92 Kansas 819.

This decision determines the law of this case.

Absence of Treaty.

We think there is no treaty existing between Great Britain and this country which entitles a citizen of Canada to inherit land in Kansas. The Jay treaty with Great Britain, of the year 1794, does not help the defendant in error, Jane Kidd, in this case. Article 9 is the only provision of that treaty which refers to the rights of aliens with reference to land and is as follows:

"It is agreed that British subjects who now hold lands in the territories of the United States, and American citizens who now hold lands in the dominions of His Majesty, shall continue to hold according to the nature and tenure of their respective estates and titles therein;

and may grant, sell, or devise the same to whom they please, in like manner as if they were natives; and that neither they nor their heirs or assigns shall, so far as may respect the said lands and the legal remedies incident thereto, be regarded as aliens."

An examination of the same shows clearly that it refers and is applicable to British subjects who can show that the title to the land for which they contend was in them or their ancestors when that treaty was made. There is no such contention here. Consequently, this treaty is not applicable. From 1794 or from the consummation or ratification of the Jay treaty until 1899, none of the treaties of the United States with Great Britain contain any stipulation relative to the tenure of real estate.

It is contended that the treaty between the United States and Great Britain, signed March 2, 1899, is applicable. That treaty is not applicable in this case for the reason that Jane Kidd is a citizen of Canada and the party from whom she inherits was in her lifetime a citizen of Canada, which is a colony of Great Britain. Article I of this treaty makes provision for the disposition of real estate upon the death of any person holding such property. Article II provided for the disposal of personal property by testament, donation or otherwise. Article IV of the treaty has the following provision:

"The stipulations of the present convention shall not be applicable to any of the colonies or foreign possessions of her Britannic Majesty unless notice to that effect shall have been given on her behalf of any such colony or foreign possession by her Britannic Majesty's representative at Washington to the United States Secretary of State within one year from the date of the exchange of the ratifications of the present convention."

The authority we have before us advises that no notice to the effect that the Dominion of Canada would take advantage of the stipulations of that convention was filed

with the Department of State in the time and manner provided by the treaty. Consequently, no citizen of Canada can take advantage of that treaty or come within its provisions. It was argued in the court below that Article V gives the defendant in error in this case the right to enjoy those rights which may be accorded to the citizens or subjects of the most favored nation. We think that Article V cannot apply to the facts of this case until the Dominion of Canada as a colony of Great Britain has come within the provisions of this treaty, and inasmuch as it failed to cause notice to be given to the Department of State within one year from the date of the exchange of the ratifications of that convention, the most favored nation clause is not applicable. Counsel in the court below cited some case wherein the courts have held that subjects of Great Britain were entitled to inherit under this treaty. We think that an examination of each of these authorities will disclose that in those cases the aliens were residents of England proper or of a colony which had served the notice upon the United States Secretary of State in the manner provided by the treaty.

For the reasons suggested the judgment of the lower court should be reversed.

Respectfully submitted,

B. I. LITOWICH,
Solicitor for Plaintiff in Error.

C. W. BURCH,
LA RUE ROYCE,
GEO. F. BEATTY,

Of Counsel.

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No. 

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1919.

BARTHOLOMEW SULLIVAN, MARGARET THO-
LEN, JOHN MARTIN ET AL.,
APPELLANTS,

VS.

JANE KIDD, APPELLEE.

BRIEF ON BEHALF OF APPELLEE.

O. H. DEAN,
H. M. LANGWORTHY,
R. B. THOMSON,
R. D. WILLIAMS,
Solicitors for Appellee.

J. E. MADDEN,
W. D. MCLEOD,
Of Counsel.

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No. 268.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1919.

BARTHOLOMEW SULLIVAN, MARGARET THO-
LEN, JOHN MARTIN ET AL.,
APPELLANTS,

VS.

JANE KIDD, APPELLEE.

STATEMENT.

In addition to the statement made on behalf of appellants, we submit the following:

No evidence is preserved in the record, and the case comes to this court on appeal from the District Court of the United States for the District of Kansas, First Division, on the record made solely by the pleadings and the record entries in the court below.

The proceedings were instituted in the District Court of the United States for the District of Kansas, First

Division (Record, 2-4); and the real estate sought to be partitioned was located in Saline County, Kansas (Record, 3, 9), which county is included within the first division of the judicial district for the State of Kansas (U. S. Comp. Stat., Sec. 1067; Sec. 82 Judicial Code). Under the provisions of that section:

"Terms of the District Court for the First Division, shall be held in Leavenworth on the second Monday in October, at Topeka on the second Monday in April, at Kansas City, on the second Monday in January, and the first Monday in October, and at Salina on the second Monday in May."

It is charged in the amended bill of complaint (Record, 8):

"That the determination of this controversy depends, materially, upon the construction to be placed upon the existing treaties between the United States of America and the Kingdom of Great Britain and Ireland which affect the tenure and disposition of real property among the citizens and subjects of said signatory powers."

It is further alleged that on January 20, 1915, one Peter Martin, a widower and unmarried, died at Osawatimie, Kansas, intestate and without issue, and at the time of his death and prior thereto, he was a citizen and resident of Saline County, Kansas, owning the real property sought to be partitioned by these proceedings.

That the said Peter Martin left surviving him brothers and sisters, or descendants of brothers and sisters, among whom was Margaret Ingoldsby, a sister.

The bill of complaint further alleges (Record, 9, 10):

"That subsequent to the death of the said Peter Martin and on or about the 28th day of July, 1916, the said Margaret Ingoldsby died at her home in the township of Sheffield, County of Lennox-Addington, Province of Ontario, Dominion of Canada, and that at the time of her death she, the said Margaret Ingoldsby, was a citizen and resident of said township, county, province and dominion, and a non-resident alien of the United States of America and State of Kansas, that in her last will and testament which was duly filed and probated in his Majesty's Surrogate Court sitting in and for said county and province, the said defendant, Jane Kidd, was duly named as sole legatee and devisee, a copy of said last will and testament being hereto annexed marked Exhibit A and made part of this amended bill of complaint, by virtue whereof the right of inheritance of the said Margaret Ingoldsby and her said legatee and devisee are determined by the conventions of 1899 and 1902, entered into by and between the Governments of His Britannic Majesty and the United States of America and affecting the tenure and disposition of real and personal property between the citizens and subjects of said signatory powers.

* * * * *

That under and by virtue of the laws of the State of Kansas complainants herein are the owners in fee simple of an undivided one-sixth of the real estate hereinbefore described, and that the said defendants, other than the said Jane Kidd, as sole legatee and devisee of the said Margaret Ingoldsby, deceased, Joseph Martin, as administrator of the estate of the said Peter Martin, deceased, and John Martin the son of Joseph Martin, are the owners, in fee simple, of the remaining five-sixths of said real estate."

In the prayer of the bill of complaint is included the following (Record, 11):

"That the court decree that the complainants herein are the owners in fee simple of an undivided one-sixth of said real estate; that said real estate be sold and that the proceeds derived from the judicial sale thereof be divided as may be consistent with said rights and the principles of equity and that it be further decreed that the said Jane Kidd, Joseph Martin, administrator, and John Martin, the son of Joseph Martin, have no right, title, claim, estate or interest in, to or upon said real estate or any part thereof of any kind or character whatsoever, and for such other and further relief as to the court may seem equitable and just including judgment for costs."

The last will and testament of Margaret Ingoldsby, which the bill of complaint recites is annexed thereto and made a part thereof, is not included in the record.

The original Bill of Complaint (Record, 4), charges that Margaret Ingoldsby was at the time of the death of Peter Martin, a **subject** of His Britannic Majesty.

In the course of the proceedings an application for a decree *pro confesso* was filed in the District Court at Salina, Kansas (Record, 19), but so far as the record shows no decree *pro confesso* was ever taken.

Thereafter on March 11, 1918 (Record, 20-23), a decree was entered in said cause undertaking to define the interests of the parties in the real estate in question and ordering a partition and sale of said real estate.

Appellants in their brief state (p. 2):

"Upon March 11, 1918, at Wichita, Kansas, and at the March Term of said court (Tr. 20-23),

a decree was entered, in which decree the court found that the said Jane Kidd had failed to answer or otherwise plead to the amended bill," etc.

It does not appear from the decree that said order was made at Wichita, and nowhere in the record does it appear that said order was made at Wichita, except on statement of counsel in the application for order of distribution contained on page 30 of the record.

The decree recites (Record, 20) that "this cause came on to be heard at this term," but does not say what term, nor does it appear at what term of court the decree was taken.

The terms of the District Court were held at Wichita for the *Second* Division of the District Court of Kansas, only, and this proceeding was pending in the *First* Division of the District Court (U. S. Comp. Stat., Sec. 1067; Judicial Code, Sec. 82).

Thereafter the real estate was sold pursuant to the decree of the court (Record, 25), and in the order confirming sale (Record, 28), made at Kansas City in the First Division of said District Court, on April 23rd, it is distinctly provided (Record, 29):

"It is further ordered jurisdiction of this cause is expressly reserved for the purpose of fixing the compensation of the special master and solicitors for the parties, ordering payment made, distributing the purchase price and to make any and all further orders herein as equity and justice may demand."

Thereafter an order making allowances and for the disbursements of proceeds of Master's sale was made May

13th, 1918, at Salina, Kansas, by which decree the court made an order of distribution, and, after providing for the payment of expenses and costs of sale and taxes assessed against said real estate, the court provided (Record, 32) :

"and that of the sum then remaining, a one-seventh be retained by said Special Master, subject to the further order of the court and that the balance thereof be distributed among the parties to this cause, complainant—and defendant—in this action, to-wit :

Bartholomew Sullivan and Margaret Tholen, a one-twelfth ($1/12$) each,

John Martin, Joseph Martin and Anna Martin, a one-sixth ($1/6$) each,

Joseph Martin, purchaser of the undivided interest of Patrick H. Martin, defendant, a one ($1/66$) sixty-sixth,

Bernard J. Martin, Edward F. Martin, Leo R. Martin, J. Vincent Martin, Michael H. Martin, Thomas C. Martin, Rachel I. Martin, Mary A. Standard, Anne F. Martin, and Julia F. Martin, a one ($1/66$) sixty-sixth each.

Joseph Hall, James Hall, Ellen Hall, Mary Hall, Thomas Hall, Winnifred Hall, Gertrude Hall and William Hall, a forty ($1/48$) eighth each.

And it is further ordered that the said special master issue proper vouchers in payment of the interests as above set forth and the court hereby retains jurisdiction of this cause for the purpose of such further and other orders in the premises as may appear equitable and just."

No exception is taken to the action of the court in withholding one-seventh of the net proceeds of the sale (being the amount to which Jane Kidd would be entitled as a devisee of the said Margaret Ingoldsby, if the said

Margaret Ingoldsbly is entitled to participate as an heir at law of the decedent).

Endorsed upon this decree appears the following (Record, 32):

"O. K.

Burch, Litwisch & Royce,

Attys. for Joseph Martin et al.

Geo. F. Beatty,

Atty. for Bartholomew Sullivan, et al. and
John Martin et al."

Thereafter at the instance of the Honorable C. L. N. Pearson, British Consul, at St. Louis, Missouri (Record, 34), the court allowed an intervening petition to be filed on behalf of Jane Kidd, appellee, in order that further consideration might be given to her rights in the premises, it appearing that on account of serious illness, said Jane Kidd was unable to be present or arrange for the presentation of her rights at the time sale was made (Record, 36).

There was also filed on behalf of Jane Kidd a petition for rehearing (Record, 32-33).

Thereupon the case was heard upon the intervening petition of Jane Kidd, and the court found that Jane Kidd is the sole devisee of Margaret Ingoldsbly, who was a sister of Peter Martin, deceased, and that the said Margaret Ingoldsbly died on or about the 28th day of July, 1916, after the death of said Peter Martin, and that under the law and treaties in force and effect at said time, the said Margaret Ingoldsbly was entitled to inherit from the said Peter Martin as one of his heirs a

one-seventh interest in and to the real estate referred to in the bill of complaint, and that the said Jane Kidd as the sole legatee and devisee of said Margaret Ingoldsby is entitled to receive the share in the net proceeds of the sale of said real estate, which said Margaret Ingoldsby would have received if living, and it was ordered by the court that after the payment of the fees, expenses, costs and taxes provided for in the order of the court entered on May 13, 1918, the special master be directed to pay to counsel for Jane Kidd one-seventh of the proceeds of the sale of the real estate, then remaining in his hands, which said sum was by said order of the court directed to be retained by said special master subject to the future order of the court (Record, 34, 35).

The only questions presented by appellants are:

1. Whether the court properly permitted an intervention on behalf of Jane Kidd.
2. Whether the court was correct in holding that under the laws and treaties in force and effect at the time of the death of Peter Martin, deceased, Margaret Ingoldsby was entitled to inherit from the said Peter Martin as one of his heirs.

BRIEF AND ARGUMENT.

I.

The court properly permitted the filing of the intervening petition on behalf of the appellee.

It is argued by appellants that (page 5) :

"The application for leave to file an intervening petition was not filed until June, 1919, at Kansas City, Kansas. The order granting leave to file intervening petition was made on the 19th of June, 1918. The decree adjudicating that Jane Kidd had no interest in the premises was made and filed upon March 11, 1918, at Wichita during the March Term. Consequently the court did not have authority to grant leave to file the intervening petition."

As heretofore pointed out in the statement of facts, the proceedings were pending in the first division for the District of Kansas, in which division the land sought to be partitioned is situated. That is, the land was situate in Saline County, which is included in the territory which the First Division embraces (Sec. 1067, U. S. Comp. Stat.; Sec. 82, Judicial Code). Wichita is in the Second Division. It does not appear from the record that the decree of March 11, 1918, was entered at Wichita, nor that it was entered at the March term, as contended by counsel (Record, 20-23). Section 82 of the Judicial Code does not provide for a March Term to be held anywhere in the first division, and if a decree was

entered in the Second Division at Wichita, then the court was without jurisdiction to enter the decree at all. The presumption being in favor of the regularity of the proceedings of the court below, it must be presumed that the decree was duly entered in the First Division during one of the terms of that division. By the terms of that decree, the court retained jurisdiction of the cause for certain purposes (Record, 23), and at whatever term of court the decree was entered, it is obvious that the term was continued for further orders in the case.

In case of *Walker et al. v. Moser et al.*, 117 Fed. 230, decided by the Circuit Court of Appeals for the Eighth Circuit, which includes the District of Kansas, it was held that (L. c. 233):

"This court will not presume that the Circuit Court has committed errors not made to appear, nor that it has falsified its records."

In that case it was contended that the decision on the motion for a new trial came too late because it came after the term had ended in which the verdict was rendered.

It was held that the jurisdiction of the court over the cause and parties continued after such term, if during the term a question respecting the motion is entertained and allowed and held open for further consideration.

It does not appear in the case at bar that the term in which the partition decree was entered had ended before the orders complained of were entered; but even if it did, the action of the court in retaining jurisdiction

of the case was sufficient to give it ample jurisdiction to permit intervention.

Thereafter under the order confirming the sale made on April 23, 1918, the court expressly reserved jurisdiction of the cause for the purpose of distributing the purchase price and "to make any and all further orders herein as equity and justice may demand" (Record, 29). Here again it is to be presumed that the term of court was continued for further orders in the case, and that under the reservation of jurisdiction, the court had ample power to make such further orders as equity and justice may require.

In the order made on May 13th, 1918 (Record, 32), the court retained jurisdiction of the cause by its decree for the purpose of such further and other orders in the premises as may appear equitable and just, and by that decree retained one-seventh portion of the net proceeds of the sale, obviously for the purpose of holding open the question as to whether appellee, Jane Kidd, was entitled to such proceeds. No exception was taken to the action of the court in withholding this sum or in retaining jurisdiction of the cause.

It is provided in the equity rules (Rule 37) among other things:

"Any one claiming an interest in the litigation may at any time be permitted to assert his right by intervention, but the intervention must be in subordination to, and in recognition of, the propriety of the main proceeding."

Under this provision of the equity rules, the trial court very properly permitted an intervening petition to be filed on behalf of Jane Kidd pursuant to the suggestion and request of the British Consul.

We submit, therefore, that there is no merit in the contention that the trial court erred in permitting intervention.

II.

Under the treaties in force and effect between this country and the United Kingdom of Great Britain and Ireland, the appellee is entitled to share in the proceeds of the partition sale.

As we understand the argument on behalf of appellants, no contention is made that Jane Kidd is not entitled to take the interest of Margaret Ingoldsby by devise, provided that Margaret Ingoldsby was entitled to inherit as one of the heirs of the deceased, Peter Martin. It is well settled that by the common law that an alien can take lands by purchase, and that there is no distinction whether the purchase be by grant or by devise.

In the early case of *Fairfax's Devisee v. Hunter's Lessee*, 7 Cranch's Reports, 603, 1 c. 619, Mr. Justice Story, stated the rule as follows:

"It is clear by the common law, that an alien can take lands by purchase, though not by descent; or in other words he cannot take by the act of law, but he may by the act of the party. This principle has been settled in the year books, and has been uniformly recognized as sound law from that time.

11 Hen. 4, 26. 14, Hen. 4, 20. Co. Litt. 2 b. Nor is there any distinction, whether the purchase be by grant or by devise. In either case, the estate vests in the alien."

The common law is in force in the State of Kansas, insofar as it has not been modified (Sec. 1129, Gen. Stat. of Kansas, 1915), and as there is no claim that the common law has been modified in this respect, the only question is whether Margaret Ingoldsby who died subsequent to the death of the decedent, Peter Martin, was entitled to inherit under the treaties in force and effect between the United States and the United Kingdom of Great Britain and Ireland.

In the case of *Johnson v. Olson*, 92 Kansas, 819, 1. c. 822, the court expressly held that the common law rule is now in force in the State of Kansas.

The only question presented, therefore, is whether Margaret Ingoldsby, a sister of the decedent, was entitled to inherit as such, and receive her proportionate share of the proceeds of the partition sale.

Prior to the amendment of the Kansas State Constitution in 1888 (*Johnson v. Olson*, 92 Kan. 819, 1. c. 821), a non-resident alien had the same right to inherit as a resident and citizen of Kansas.

In the case of *Johnson v. Olson*, 92 Kansas, 1. c. 821, the court said:

"Originally aliens and citizens were upon an equality in Kansas so far as the inheritance of property was concerned."

Consequently, except for the amendment to the state constitution, Margaret Ingoldsbly, a sister of the decedent, would have been entitled to inherit (*State of Kansas v. Ellis*, 72 Kan. 285).

It is, however, the contention of the appellee that, regardless of the laws and decisions of the State of Kansas at the time of the death of Peter Martin, under the treaties in force and effect between the United States and the United Kingdom of Great Britain, Margaret Ingoldsbly was entitled to inherit a one-seventh interest of the real estate belonging to Peter Martin, at the time of his death and situate within the State of Kansas, and that she having inherited such one-seventh interest, that interest was acquired by Jane Kidd, the appellee, by devise, pursuant to the terms of the last will and testament of the said Margaret Ingoldsbly.

The "Convention as to Tenure and Disposition of Real and Personal Property," concluded March 2, 1899, between the United States of America and the United Kingdom of Great Britain and Ireland, clearly entitles Margaret Ingoldsbly to inherit a one-seventh interest in the land in question, unless such right is denied by Article IV of that treaty.

The preamble to this treaty contains the following (Vol. I, Malloy's Compilation of Treaties, etc. between The United States of America and other powers, page 774):

"The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, desiring to improve the con-

dition of the citizens and subjects of each of the respective countries in relation to the tenure and disposition of real and personal property situated or being within the territories of the other, as well as to authorize the representation of deceased persons by the Consuls of their respective nations in the settlement of estates, have resolved to conclude a convention for those purposes and have named as their plenipotentiaries:"

Article I of that treaty is as follows:

"Where, on the death of any person holding real property (or property not personal), within the territories of one of the Contracting Parties, such real property would, by the laws of the land, pass to a citizen or subject of the other, were he not disqualified by the laws of the country where such real property is situated, such citizen or subject shall be allowed a term of three years in which to sell the same, this term to be reasonably prolonged if circumstances render it necessary, and to withdraw the proceeds thereof, without restraint or interference, and exempt from any succession, probate or administrative duties or charges other than those which may be imposed in like cases upon the citizens or subjects of the country from which such proceeds may be drawn."

Article IV of that treaty provides as follows:

"The stipulations of the present convention shall not be applicable to any of the colonies or foreign possessions of Her Britannic Majesty unless notice to that effect shall have been given, on behalf of any such colony or foreign possession by Her Britannic Majesty's Representative at Washington to the United States Secretary of State, within one year from the date of the exchange of the ratifications of the present convention.

It is understood that under the provisions of this Article, Her Majesty can in the same manner give notice of adhesion on behalf of any British Protectorate or sphere of influence, or on behalf of the Island of Cyprus, in virtue of the Convention of the 4th of June, 1878, between Great Britain and Turkey.

The provisions of this Convention shall extend and apply to any territory or territories pertaining to or occupied and governed by the United States beyond the seas, only upon notice to that effect being given by the Representative of the United States at London, by direction of the treaty making power of the United States."

It will be observed that the purpose of the treaty, as set forth in the preamble, is a desire to improve the conditions of the citizens and subjects of each of the respective countries in relation to the tenure and disposition of real and personal property situated or being within the territories of the other.

It is conceded that Margaret Ingoldsbly at the time of the death of Peter Martin was "a subject of the United Kingdom of Great Britain and Ireland" (Record, 4, 36), and that the real estate is located within the United States.

It is apparently the contention of appellants that no notice was given on behalf of the Dominion of Canada of its acceptance of the treaty, and that therefore under the terms of Article IV of the treaty, Margaret Ingoldsbly, who was a resident of the Dominion of Canada, is excluded from the terms of Article I thereof.

This contention, we submit, ignores not only the precise terms of the treaty, but also the general rules of construction in reference to treaties.

It will be observed that Article IV of the treaty does not provide that the stipulations of the treaty shall not be applicable to any of the *residents* of the Colonies or foreign possessions of Her Britannic Majesty, unless notice to that effect shall be given; but merely provides that the stipulations of the treaty shall not be applicable to any of the colonies or foreign possessions of Her Britannic Majesty, unless such notice has been given.

The preamble recites that the purpose is to improve the condition of the "citizens and subjects of each of the respective countries," and Article I of the treaty specifically provides for inheritance of real property by "citizens and subjects" of each of the other countries.

The treaty does not undertake to distinguish between *residents* of different portions of the United Kingdom of Great Britain or of the United States; but by the terms of the treaty the benefits thereof extend to all "citizens and subjects" of each of the respective countries without regard to their place of residence. While the provisions of Article IV are somewhat vague, there is nothing in the terms thereof which excludes the citizens and subjects of either of the contracting parties by virtue of their place of domicile or residence. The most that can be said for that Article of the treaty is that it possibly excepts some of the territory of each of the contracting parties.

The last paragraph of Article IV makes it clear that the restriction is intended to be *territorial* and not based upon the place of residence of the citizen or subject of either of the contracting parties.

A subject of the Kingdom of Great Britain is *non* the less a subject because he may be residing in Canada or may be residing in one of the colonies or even in a foreign country. It clearly was not the intent of the treaty to prevent a subject of the Kingdom of Great Britain, who might be residing in Canada, from the benefit of such treaty, while extending the benefits of such treaty to a subject of Great Britain, who might be residing in France, Germany, The United States, or in any other foreign country.

It may be that the intention was to exclude the *territory* of non-adhering colonies of the United Kingdom of Great Britain and the *territories* occupied and governed by the United States beyond the seas, unless notice were given, as provided by Article IV. Under such construction, a citizen of the United States would not be permitted to inherit lands situated in Canada in the absence of such notice, and a subject of the United Kingdom of Great Britain would not be entitled to inherit lands in the Philippine Islands, in the absence of such notice, but this does not prevent a subject of the United Kingdom of Great Britain, wherever domiciled, from inheriting lands situated in the United States, *nor* does it prevent a citizen of the United States from inheriting land situated in England, wherever he may be domiciled.

This construction of Article IV is a sensible construction, because it might very well be that neither of the contracting parties desired to have the subjects or citizens of the other inherit lands situated in their colonies or territories beyond the seas, except upon such consent of such particular colonies or possessions.

The very object and purpose of the treaty, however, being to improve the conditions of the citizens and *subjects* of each of the others in relation to tenure and disposition of real and personal property, there could be no possible reason for making a distinction between a subject or citizen of the other who might be temporarily or permanently residing in some particular territory.

The rule is well settled that treaties must receive a fair and liberal interpretation, and a sensible construction, which will accomplish the obvious intent of the parties is to be preferred as against one which is contrary to the obvious spirit and intent.

In 1 Kent's Commentaries, 174, the learned author says:

"Treaties of every kind when made by the competent authority are as obligatory upon nations as private contracts are binding upon individuals, and they are to receive a fair and liberal interpretation according to the intention of the contracting parties, and to be kept with the most scrupulous good faith. Their meaning is to be ascertained by the same rules of construction and course of reasoning which we apply to private contracts."

This rule has been consistently adhered to and repeatedly announced by this court.

In the case of *Shanks v. Dupont*, 3 Peters, 262, Mr. Justice Story, in discussing the 9th article of the John Jay treaty of 1794 with Great Britain, said (p. 249):

"Now, Mrs. Shanks was at the time a British subject, and she then held the lands in controversy; she is therefore within the words of the treaty. Why ought she not also to be held within the spirit and intent? It is said that the treaty meant to protect the rights of British subjects, who were not also American citizens; but that is assuming the very point in controversy. If the treaty admits of two interpretations, and one is limited and the other liberal, one which will further and the other exclude private rights, why should not the most liberal exposition be adopted? The object of the British government must have been to protect all her subjects holding lands in America from the disability of alienage in respect to descents and sales."

In the case of *Hauenstein v. Lynham*, 100 U. S. 483, 1 c. 487, this court had under consideration a treaty between this country and Switzerland in reference to the inheritance of real estate. In discussing the treaty, Mr. Justice Swayne, speaking for the court said:

"Where a treaty admits of two constructions, one restrictive as to the rights, that may be claimed under it, and the other liberal, the latter is to be preferred. *Shanks v. Dupont*, 3 Pet. 242. Such is the settled rule in this court."

Likewise in the case of *Geofroy v. Riggs*, 133 U. S. 258, the court had under consideration a treaty between this country and France in reference to the inheritance of real estate by a citizen of France in the District of Columbia. The court again announced the same

principle of construction in the following language (p. 271):

"It is a general principle of construction with respect to treaties that they shall be liberally construed, so as to carry out the apparent intention of the parties to secure equality and reciprocity between them. As they are contracts between independent nations, in their construction words are to be taken in their ordinary meaning, as understood in the public law of nations, and not in any artificial or special sense impressed upon them by local law, unless such restricted sense is clearly intended. And it has been held by this court that where a treaty admits of two constructions, one restrictive of its rights that may be claimed under it and the other favorable to them, the latter is to be preferred. *Hauenstein v. Lynham*, 100 U. S. 483, 487. The stipulation that the government of France in like manner accords to the citizens of the United States the same rights within its territory in respect to real and personal property and inheritance as are enjoyed there by its own citizens, indicates that that government considered that similar rights were extended to its citizens within the territory of the United States, whatever the designation given to their different political communities."

That decision is of special significance in the case at bar, because under the precise terms of the treaty, inheritance of real estate in the United States was permitted only in "states of the union" and the land in question was situated within the District of Columbia, which is not one of the states.

The court held, however, that under the principles of construction announced by it, the language of the treaty would be construed to include real estate located

in the District of Columbia, although it was not, strictly speaking, one of the states of the Union.

In the case of *In re Ross, Petitioner*, 140 U. S. 453, the court had under consideration a treaty between this country and Japan. The court said (l. c. 475):

"Reading the treaty and statute together in view of the purpose designed to be accomplished, we are satisfied that it was intended by them to bring within our laws all who are citizens, and, also, all who, though not strictly citizens, are by their service equally entitled to the care and protection of the government. It is a canon of interpretation to so construe a law or a treaty as to give effect to the object designed, and for that purpose all of its provisions must be examined in the light of attendant and surrounding circumstances. To some terms and expressions a literal meaning will be given, and to others a larger and more extended one. The reports of adjudged cases and approved legal treatises are full of illustrations of the application of this rule. The inquiry in all such cases is as to what was intended in the law by the legislature, and in the treaty by the contracting parties."

Again in the case of *United States v. Texas*, 162 U. S. 1, l. c. 36, the same rule was announced and applied. The court said:

"Undoubtedly, the intention of the two governments, as gathered from the words of the treaty, must control; and the entire instrument must be examined in order that the real intention of the contracting parties may be ascertained. 1 Kent Com. 174."

There can be no doubt that the terms "citizens and subjects" and "citizens or subjects" used in the treaty under consideration, are used in the broader sense, based upon nationality and permanent allegiance to the government, rather than in the sense of mere domicile.

It is said that the term "British subject" means any person who owes permanent allegiance to the Crown.

Dicey *Conflict of Laws*, 2d Ed. 1908, pages 166-191.

In the case of *United States v. Wong Kim Ark*, 169 U. S. 649, this court had under discussion the meaning of the term "citizen." In the course of the opinion, the court said (l. c. 656, 657) :

"In *Udny v. Udny* (1869), L. R. 1 H. L. Sc. 441, the point decided was one of inheritance, depending upon the question whether the domicile of the father was in England or in Scotland, he being in either alternative a British subject. Lord Chancellor Hatherley said: 'The question of naturalization and of allegiance is distinct from that of domicile.' p. 452. Lord Westbury, in the passage relied on by the counsel for the United States, began by saying: 'The law of England, and of almost all civilized countries, ascribes to each individual at his birth two distinct legal states or conditions; one, by virtue of which he becomes the subject of some particular country, binding him by the tie of natural allegiance, and which may be called his political status; another, by virtue of which he has ascribed to him the character of a citizen of some particular country, and as such is possessed of certain municipal rights, and subject to certain obligations, which latter character is the civil status or condition of the individual, and may be quite different from his political status.'

* * * * *

Lord Chief Justice Cockburn, in the same year, reviewing the whole matter, said: 'By the common law of England, every person born within the dominions of the Crown, no matter whether of English or of foreign parents, and, in the latter case, whether the parents were settled, or merely temporarily sojourning, in the country, was an English subject; save only the children of foreign ambassadors (who were excepted because their fathers carried their own nationality with them), or a child born to a foreigner during the hostile occupation of any part of the territories of England. No effect appears to have been given to descent as a source of nationality.' Cockburn on Nationality, 7."

See also:

MacKenzie v. Hare et al., 239 U. S. 299, 311.

Harding v. Standard Oil Co., 182 Fed. 421.

Hammerstein v. Lync, 200 Fed. 165.

Clearly, Margaret Ingoldsby was a subject of the United Kingdom of Great Britain, because she owed allegiance to that government, and as no attempt is made in the treaty to confine her rights because of domicile in any particular part of the kingdom, she is entitled to the benefit of the provisions contained in Article I.

The same is true with respect to citizens of the United States. Their rights under the treaties are fixed regardless of the place of their particular domicile or residence.

While it may be that this treaty is somewhat obscure in its meaning (*Doe v. Roe*, 4 Penn. (Del.) 398; 55 Atl. 341), yet it cannot be said that either under the precise terms of the treaty or under a proper interpretation thereof it was intended that a subject of Great Britain who happened to be domiciled in Canada, should

be excluded from the benefits of Article I thereof, because notice had not been given as provided in Article IV. This article on its face purports to be a limitation as to territory only, and not as to the citizens and subjects of either party because of residence.

III.

Under the most favored-nation clause of the treaty, Margaret Ingoldsby was entitled to inherit.

Article V of the treaty under consideration provides as follows:

"In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of each of the High Contracting Parties shall in the Dominions of the other enjoy the rights which are or may be accorded to the citizens or subjects of the most favored nation."

There was evidently some purpose for putting this provision in the treaty.

Most favored nation clauses in treaties have been variously construed, and it is perhaps the rule that where they relate to commercial concessions, such a clause contained in a treaty does not require the granting of similar concessions to those granted to other countries, unless the concessions are reciprocal. But where the treaty is of a political nature, and is one of amity and friendship, and for the purpose of bettering the political conditions of citizens and subjects of each of the contracting parties, the most favored-nation clause is clearly applicable.

In the case of *Wyman v. McEroy*, 191 Mass. 276, the Supreme Court of Massachusetts had under consideration the meaning of the most favored-nation clause of a treaty similar to the one under consideration here. The court said (l. c. 277) :

"Under the most favored nation clause reliance is had upon the provisions of article 9 of the treaty of 1833 between the Argentine Republic and the United States, which read as follows: 'If any citizen of either of the two contracting parties shall die without will or testament, in any of the territories of the other, the consul-general or consul of the nation to which the deceased belonged, or the representative of such consul-general or consul, in his absence, shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs.' See also the treaty between Costa Rica and the United States of 1851, Article 8."

The court held that under the most favored nation clause contained in a treaty with Russia, the foregoing provision in the treaty with the Argentine Republic would apply to a Russian citizen dying in Massachusetts and leaving heirs in Russia.

A clause of this character was recently before this court in the case of *McGovern v. Phila. & Reading Railroad*, 235 U. S. 389. Inasmuch as the decision turned upon other questions the court did not do more than to mention the matter in the following language (l. c. 397) :

"It is suggested rather than urged that the case is not properly here on direct appeal. But the right of direct appeal is based on the ground,

among others, that the construction and application of the treaty between the United States and Great Britain and Ireland are involved in the case, the favored-nation clause of which give the residents and citizens of Great Britain and Ireland the same rights as those of Italy, and that by a treaty between the latter and the United States its citizens are entitled to exactly the same rights as citizens of this country in the courts of this country, although the citizens of Italy may be residing abroad."

In that case, the concessions granted were of a political rather than of a commercial nature.

The same is true in the case of *Lobrasciano's Estate*, 77 N. Y. Suppl. 1040. In that case the court said (l. c. 1045):

"While the forms of expression in the numerous treaties of the United States widely differ, nevertheless governments in their negotiations acted according to well-defined principles, and had in view specific objects, and, although the language varies in the different treaties, the privileges and prerogatives given and obtained in respect to the same subject are in furtherance of the same common principle and object. So, where provisions are found in one treaty of doubtful import, we are entitled to look to the provisions of treaties with other nations, on the same subject, which are free from doubt, or which, having been construed, will aid us in determining the true spirit and meaning of that which is in doubt."

See also *In re Fattosini's Estate*, 67 N. Y. Suppl. 1119, which is to the same effect.

It is obvious from an examination of the treaties which this country has concluded with the various coun-

tries, that the general object and purpose thereof is to remove the common law disability which prevents an alien of one country from inheriting under the laws of the other, and that such being the general purpose and object of other treaties, the treaty between the United States and the United Kingdom of Great Britain should under the most-favored nation clause be so construed as to attain the object of that treaty, and at the same time to grant to the subjects of the United Kingdom, the same privileges that are granted to citizens and residents of other foreign countries.

It will be observed that Article V of the treaty under consideration, provides that "in all that concerns the right of disposing of every kind of property, *real or personal*, citizens or *subjects* of each of the contracting parties, shall in the dominions of the other enjoy the rights which are or may be accorded to the citizens or subjects of the most favored nation." There are many treaties which this country has concluded with other nations which accord to the citizens and subjects of each of the contracting parties the right of inheriting real estate located in the boundaries of the other.

In the "Treaty of Friendship, Commerce, and Navigation" concluded in the year of 1887, between this country and Peru, it is provided in Article XI thereof as follows (2 Malloy on Treaties, Conventions, etc., p. 1434):

"The citizens of either of the high contracting parties shall have the full powers and liberty to dispose of their personal and real estate and effects

of every kind and description, within the jurisdiction of the other, by sale, donation, testament, or otherwise; and their heirs or representatives, being citizens of the other party, shall succeed to the said personal and real estate and effects, whether by testament or *ab intestato*, and may take possession of the same themselves or by others acting for them, and dispose of the same at their pleasure, paying such dues only as the citizens of the country, wherein said estate and effects may be, shall be subject to pay in like cases."

Similar favor provisions are contained in the following treaties:

Treaty with Austria-Hungary, concluded May 8, 1848, Article II (1 Malloy on Treaties, Conventions, etc., p. 34).

Treaty between this country and Brazil, concluded December 12, 1828, Article XI (1 Malloy on Treaties, Conventions, etc. 136).

Treaty between this country and the Independent State of The Congo, concluded January 24, 1891, Article II (1 Malloy on Treaties, Conventions, etc., p. 329).

Treaty between this country and Dominican Republic, concluded February 8, 1867, Article V (1 Malloy on Treaties, Conventions, etc., p. 405).

Treaty between this country and Guatemala, concluded March 3, 1849, Article XI (1 Malloy on Treaties, Conventions, etc., p. 864).

Treaty between this country and Hesse, concluded March 26, 1844, Article II (1 Malloy on Treaties, Conventions, etc., p. 947).

Treaty between this country and Italy, concluded February 26, 1871, Article XXII (1 Malloy on Treaties, Conventions, etc., p. 976).

Treaty between this country and Nassau, concluded May 27, 1846, Article II (2 Malloy on Treaties, Conventions, etc., p. 1231).

Treaty between this country and Orange Free State, concluded December 22, 1871, Article III (2 Malloy on Treaties, Conventions, etc., p. 1311).

Treaty between this country and Paraguay, concluded February 4, 1859, Article X (2 Malloy on Treaties, Conventions, etc., p. 1367).

Treaty between this country and Portugal, concluded August 22, 1840, Article XII (2 Malloy on Treaties, Conventions, etc., p. 1457).

Treaty between this country and the two Sicilies, concluded October 1, 1855, Article VII (2 Malloy on Treaties, Conventions, etc., p. 1817).

Treaty between this country and Venezuela, concluded January 20, 1836, Article XII (2 Malloy on Treaties, Conventions, etc., p. 1834).

Treaty between this country and Wurttemberg, concluded April 10, 1844, Article II (2 Malloy on Treaties, Conventions, etc., p. 1893).

It is of special significance that in the treaty between this country and Italy above referred to, it was thought sufficient to provide simply that (1 Malloy on Treaties, Conventions, etc., p. 976):

"As for the case of real estate, the citizens and subjects of the two contracting parties shall be treated on the footing of the most favored nation."

Likewise, in the case of the treaty with the Independent State of The Congo, above referred to, it was thought sufficient to provide simply (1 Malloy on Treaties, Conventions, etc., p. 329):

"In all that concerns the acquisition, succession, possession and alienation of property, real and personal, the citizens and inhabitants of each of the High contracting Parties shall enjoy in the territories of the other all the rights which the respective laws accord or shall accord in those territories to the citizens and inhabitants of the most favored nation."

Under the two foregoing treaties above referred to, the whole subject was considered covered by the most favored nation clause. It therefore seems perfectly clear that the most favored nation clause contained in Article V of the treaty between this country and the United Kingdom of Great Britain and Ireland is itself amply sufficient to secure to Margaret Ingoldsby the right to inherit as one of the heirs of Peter Martin. It may very well be that the terms of Article V of the treaty containing the most favored nation clause were considered sufficient so that it was not necessary under any consideration to give notice as provided by Article IV of that treaty.

It is inconceivable that with the rights of inheritance which are accorded to the citizens and subjects of other nations scattered over the face of the world, it should be the intention to deny a similar right to subjects of the United Kingdom of Great Britain, because they happen to be residents of our closest neighbor, the Dominion of Canada. Whatever may be said as to the proper interpretation of Article IV of the treaty between this country and the United Kingdom of Great Britain, certainly under the provisions of Article V containing the most favored nation clause, the judgment of the trial court was correct.

In conclusion, we submit that the decision of the trial court was strictly in accordance with the terms of the treaty in effect between this country and the United Kingdom of Great Britain and Ireland, and was in accordance with the principles of equity and justice which the complainants below invoked at the time of filing their bill of complaint.

Perhaps, under strict rules of international law, the fact that Margaret Ingoldsbey was, by natural laws of succession, entitled to share in this estate with her blood kin, is not a matter for consideration, but we submit that the courts of this country will not by a strict and extreme interpretation of the treaties existing between this country and another country with which it is upon most friendly terms, deprive a subject of that country of rights which it was obviously intended they should be permitted to enjoy.

We respectfully submit that the judgment of the trial court should be affirmed.

O. H. DEAN,
H. M. LANGWORTHY,
R. B. THOMSON,
R. D. WILLIAMS,
Solicitors for Appellee.

J. E. MADDEN,
W. D. McLEOD,
Of Counsel.

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No. 65.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1920.

**BARTHOLOMEW SULLIVAN, MARGARET
THOLEN, JOHN MARTIN ET AL.,
APPELLANTS,**

VS.

JANE KIDD, APPELLEE.

**SUPPLEMENTAL BRIEF ON BEHALF OF
APPELLEE.**

**O. H. DEAN,
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**SUPPLEMENTAL BRIEF ON BEHALF OF
APPELLEE.**

This case was first argued and submitted in April, 1920. On May 17th, 1920, this court ordered that the case be restored to the docket for oral argument, and that the clerk notify the Solicitor General of the United States and the Attorney-General of the State of Kansas of the pendency of the cause (*Sullivan et al. v. Kidd*, 40 Sup. Ct. Rep. 484).

Since that time, important official correspondence, not available in this country, bearing directly upon the proper construction of the treaty in question, has been located and procured, for the first time, from the British Foreign Office at London. Also, the Solicitor General of the United States has recently filed a brief, setting forth the views of the State Department with respect to the construction of the Treaty. For these reasons, we desire to submit the following supplemental brief and argument on behalf of appellee, which, however, is not intended to supersede the "Brief on Behalf of Appellee" heretofore filed herein, but merely to be supplemental thereto.

I.

An examination of Article IV of the Treaty "in the light of attendant and surrounding circumstances" (In re Ross, Petitioner, 140 U. S. 1. c. 475), indicates that the restrictions therein contained were intended to be territorial and not personal.

The chief subject of discussion in the brief filed by the Solicitor General is the proper construction of Article IV of the treaty in question.

The official correspondence above referred to bears upon the same subject.

Article IV of the Treaty, is as follows:

"The stipulations of the present Convention shall not be applicable to any of the Colonies or foreign possessions of Her Britannic Majesty unless

notice to that effect shall have been given, on behalf of any such Colony or foreign possession by Her Britannic Majesty's Representative at Washington to the United States Secretary of State, within one year from the date of the exchange of the ratifications of the present Convention.

It is understood that under the provisions of this Article, Her Majesty can in the same manner give notice of adhesion on behalf of any British Protectorate or sphere of influence, or on behalf of the Island of Cyprus, in virtue of the Convention of the 4th of June, 1878, between Great Britain and Turkey.

The provisions of this Convention shall extend and apply to any territory or territories pertaining to or occupied and governed by the United States beyond the seas, only upon notice to that effect being given by the Representative of the United States at London, by direction of the treaty making power of the United States."

In the year 1894 (5 years previous to the negotiation of the treaty under discussion) Great Britain concluded a treaty with Japan (Treaty of Commerce and Navigation between Great Britain and Japan), Article XIX of which is very similar to Article IV of the Treaty between this country and Great Britain.

Article XIX of the British-Japanese Treaty is as follows (British and Foreign State Papers, Vol. 86, 1893-1894, p. 46):

"XIX. The stipulations of the present Treaty shall be applicable so far as the laws permit, to all the Colonies and foreign possessions of Her Britannic Majesty, excepting to those hereinafter named, that is to say, except to—

India.
The Dominion of Canada.
Newfoundland.
The Cape.
Natal.
New South Wales.
Victoria.
Queensland.
Tasmania.
South Australia.
Western Australia.
New Zealand.

Provided always that the stipulations of the present Treaty shall be made applicable to any of the above-named Colonies or foreign possessions on whose behalf notice to that effect shall have been given to the Japanese Government by Her Britannic Majesty's Representatives at Tokio within two years from the date of the exchange of ratifications of the present Treaty."

The foregoing Article of the Japanese Treaty became the subject of diplomatic correspondence in the year 1899, just before the treaty between this country and Great Britain was concluded on March 2, 1899. This correspondence was further amplified in October, 1899, long before the treaty with this country was ratified and proclaimed in the year 1900.

By that correspondence Great Britain distinctly and unequivocally announced its interpretation of a treaty provision similar to Article IV of the Treaty under discussion.

This correspondence is on file with the "Librarian and Keeper of the Papers of His Majesty's Foreign Office" at London, and a complete copy thereof (recently

procured), together with the certificate of the Librarian, is set forth in the appendix to this brief. The original certified copy will be placed on file with the clerk of this court.

In this correspondence, Lord Salisbury in a letter dated February 22, 1899, addressed to Sir E. Satow, said:

"I have had under my consideration in consultation with the Law Officers of the Crown your despatch, No. 142, of the 6th September, respecting the status of Indian and Colonial subjects of Her Majesty residing in Japan, as affected by the Treaty of the 16th July, 1894.

Her Majesty's Government are of opinion that Article XIX of the Treaty has not the effect of limiting the rights of British subjects connected with non-adhering Colonies or possessions. The question as to who are British subjects for the purposes of the Treaty is one of British Law.

Many of the persons resident in the Colonies would be British subjects even if they had been born in a foreign country as being the children or grandchildren of natural-born British subjects, and it is impossible to suppose that such persons lose the benefits of this Treaty owing to the fact that they have been born in a British Colony and not in a foreign country.

No test can be suggested for discrimination against persons connected with non-adhering Colonies or possessions. The inhabitants of such Colonies or possessions are generally, and not locally merely, British subjects. They enjoy the privileges of citizenship all over the Empire.

Her Majesty's Government are of opinion that the test of domicile could not be applied in practice and the test of residence which has also been sug-

gested appears to be even more impracticable, as residence varies from time to time and it could not be said of any colonist who came to Japan that he was then resident in the Colony.

It must be recollected that British subjects inhabiting non-adhering Colonies and Dependencies are affected by this Treaty, inasmuch as when it comes into force it puts an end to the earlier Treaties under which they enjoy a right to extraterritoriality.

The fair meaning of the Treaty, in the opinion of Her Majesty's Government, is that all persons who by British Law are recognized as possessing the rights of British citizenship all over the world are entitled to the benefits of its stipulations, and this test includes the inhabitants, being British subjects, of all Colonies and Dependencies whether they adhere to the Treaty or not.

Her Majesty's Government are of opinion that Article XIX does not discriminate between different classes of British subjects, nor create a distinction unknown to British Law and almost impossible of definition, but that its effect is merely to provide that the privileges and obligations of the Treaty shall not ensure for the benefit of non-adhering Colonies and Dependencies. For instance, the produce or manufacture of a non-adhering Colony or Dependency, would not be entitled to the Tariff prescribed by the Treaty.

Should the occasion arise you should inform the Japanese Government of the construction which Her Majesty's Government place upon the Treaty as set forth in the above observations, pointing out the impossibility of the proposed distinction, and that the discrimination introduced by Article XIX is territorial merely and not personal."

Later in a letter, dated October 19, 1899, also addressed to Sir E. Satow, Lord Salisbury said:

"I have had under my consideration, in consultation with the Law Officers of the Crown, your despatch No. 133, Confidential, of the 27th July, relative to the question of the rights of Indian and Colonial subjects of Her Majesty to the protection of their industrial property in Japan, as affected by the Treaty between this country and Japan of the 16th July, 1894.

I am advised that British subjects, though residing in or domiciled in Colonies or possessions which have not adhered, are entitled to the benefits of Article XVII of the Treaty, and also of Article II of the International Convention for the Protection of Industrial Property, signed at Paris on the 20th March, 1883, which contains the following provision:

'Les sujets ou citoyens de chacun des Etats Contractants jouiront, dans tous les autres Etats de l'Union, en ce qui concerne les brevets d'invention, les dessins ou modeles industriels, les marques de fabrique ou de commerce et le nom commercial, des avantages que les lois respectives accorderont actuellement ou accorderont par la suite aux nationaux.'

(The subjects or citizens of each of the Contracting States shall enjoy, in all the other States of the Union, in that which concerns the patents of invention, the industrial designs or models, the manufacturing or commercial trade-marks and the commercial name, the advantages which the respective laws shall accord to the nations at the present time or afterwards.)

The right is conferred on those who are British subjects, and is not lost by their being resident or domiciled either in a foreign country or in a Colony which has not adhered.

The right under the Convention is also conferred by Article III on foreigners domiciled in one of the Contracting States. Of course, domicile in a

non-adhering Colony would not be effectual for this purpose, as the test is, in this instance, local, not personal as in the case of British subjects. This distinction is also illustrated by Articles IV and VI of the Convention, which would not apply in the case of non-adhering Colonies" (The above translation is ours).

It appears from the foregoing, that prior to the time that the Treaty in question was concluded, and substantially at the same time, the British Foreign Office promulgated an interpretation of an Article similar to Article IV of the Treaty between this country and Great Britain, by which the Foreign Office clearly and definitely declared its understanding of that article.

Applying the same interpretation to Article IV of the British-American Treaty of 1899, as that applied to Article XIX of the British-Japanese Treaty, it is apparent that the limitations of Article IV were intended to be territorial only and not personal; and that the failure to give notice of adhesion on behalf of Canada, has the effect merely of making the stipulations of the Treaty inapplicable to real and personal property situated in the Canadian territory; but failure to give notice of adhesion has no effect upon the rights of a British subject, because he happens to reside in Canada. (As a matter of fact, as elsewhere pointed out in this brief, Canada has enacted legislation which gives to citizens of the United States even broader rights with reference to the inheritance of real and personal property situated in Canadian territory, than would have been granted by notice of adhesion to the treaty.)

It is inconceivable that the interpretation placed upon Article XIX of the Japanese Treaty, by Great Britain, in February, 1899, was unknown to the representatives of this country who negotiated the British-American Treaty, concluded in March, 1899, and as there appears to be no record of a public expression of a different view by our State Department, it would seem that this country under well recognized rules relating to the interpretation of treaties, must be deemed to have acquiesced in and is bound by the interpretation placed upon this treaty provision by Great Britain.

It is unthinkable that any representative of this country, after the foregoing declaration by Great Britain of its interpretation of a treaty provision, should have adopted substantially the same language in a treaty subsequently concluded between this country and Great Britain, with the secret intention that such language should be construed other than in accordance with the views announced by the British Foreign Office.

In the case of *Rocca v. Thompson*, 223 U. S. 317, l. c. 332, Mr. Justice Day, speaking for this court, said:

"It is further to be observed that treaties are the subject of careful consideration before they are entered into, and are drawn by persons competent to express their meaning and to choose apt words in which to embody the purposes of the high contracting parties. Had it been the intention to commit the administration of estates of citizens of one country, dying in another, exclusively to the consul of the foreign nation, it would have been very easy to have declared that purpose in unmistakable terms."

So in this case, had it been the intention that the limitations of Article IV of the British-American Treaty should be other than territorial, as construed by Great Britain, "it would have been very easy to have declared that purpose in unmistakable terms."

This was not done, and it would seem that this country is clearly bound by the interpretation which Great Britain has placed upon this treaty, and under the terms of which the appellee is entitled to receive her proportionate share of the proceeds of the sale of the real estate in question.

As previously pointed out (Brief on Behalf of Appellee, pages 19 to 22, inclusive) treaties "are to receive a fair and liberal interpretation according to the intention of the contracting parties, and to be kept with the most scrupulous good faith."

1 Kent's Commentaries, 174.

Shanks v. Dupont, 3 Peters, 242, 1. c. 249.

Hauenstein v. Lynham, 100 U. S. 483, 1. c. 487.

Geofroy v. Riggs, 133 U. S. 258, 271.

In re Ross, Petitioner, 140 U. S. 453, 1. c. 475.

United States v. Texas, 162 U. S. 1, 1. c. 36.

In an Article on "Treaties" (38 Cyc. 961) written by Mr. Justice William R. Day and Mr. Charles Henry Butler, in discussing the construction and operation of treaties, it is stated, among other things, that "a treaty should be construed as a whole, and *in the light of the circumstances and conditions existing at the time it was entered into* * * *" (our italics).

In support of the text, the authors cite *Ross v. McIntyre*, 140 U. S. 453; *Strother v. Lucas*, 12 Peters (U. S.) 410, and *United States v. Payne*, 8 Fed. 883.

In the case of *Ross v. McIntyre* (*In re Ross, Petitioner*), 140 U. S. 430, l. c. 475, this court said:

"It is a canon of interpretation to so construe a law or a treaty as to give effect to the object designed, and for that purpose *all of its provisions must be examined in the light of attendant and surrounding circumstances*" (our italics).

In the case of *Strother v. Lucas*, 12 Peters, 410, l. c. 438, this court in discussing a treaty by which territory was ceded by one sovereign power to another, and particularly the effect of such a treaty upon the title to land held by individuals, said:

"The terms of a treaty are to be applied to the state of things then existing in the ceded territory, 8 Peters, 462;"

In the case of *United States v. Payne*, 8 Fed. Rep. 883, above referred to, the court said (p. 892):

"A treaty, like a statute or contract, must be construed to give it effect, if possible, and courts always adhere to this rule. In construing this treaty we have a right to take into consideration the situation of the parties to it at the time it was made, the property which is the subject-matter of the treaty, and the intention and purposes of the parties in making the treaty. To get at this intention *we have a right to consider the construction the parties to the treaty, and who were to be affected by it, have given it and what has been their action under it*" (our italics).

The rules for the interpretation of treaties are enumerated in Oppenheim on International Law (Vol. I, p. 560), as follows:

"It is of importance to enumerate some rules of interpretation which recommend themselves, because everybody agrees upon their suitability.

(1) All treaties must be interpreted according to their reasonable in contradistinction to their literal sense. An excellent example illustrating this rule is the following, which is quoted by several writers: In the interest of Great Britain the Treaty of Peace of Utrecht of 1713 stipulated in Article 9 that the port and the fortification of Dunkirk should be destroyed and never be rebuilt. France complied with this stipulation, but at the same time began building an even larger port at Mardyck, a league off Dunkirk. Great Britain protested on the ground that France in so acting was violating the reasonable, although not the literal, sense of the Peace of Utrecht, and France recognized in the end this interpretation and discontinued the building of the new port.

(2) The terms used in a treaty must be interpreted according to their usual meaning in the language of every-day life, provided they are not expressly used in a certain technical meaning or another meaning is not apparent from the context.

(3) It is taken for granted that the contracting parties intend something reasonable, something adequate to the purpose of the treaty, and something not inconsistent with generally recognized principles of International Law and with previous treaty obligations toward third states. If, therefore, the meaning of a stipulation is ambiguous, the reasonable meaning is to be preferred to the unreasonable, the more reasonable to the less reasonable, the adequate meaning to the meaning not adequate for the pur-

pose of the treaty, the consistent meaning to the meaning inconsistent with general recognized principles of International Law and with previous treaty obligations toward third states.

(4) The principle *in dubio mitius* must be applied in interpreting treaties. If, therefore, the meaning of a stipulation is ambiguous, the meaning is to be preferred which is less onerous for the obliged party, or which interferes less with the parties' territorial and personal supremacy, or which contains less general restrictions upon the parties.

(5) *Previous treaties between the same parties, and treaties between one of the parties and third parties, may be alluded to for the purpose of clearing up the meaning of a stipulation* (our italics).

(6) If there is a discrepancy between the clear meaning of a stipulation, on the one hand, and, on the other, the intentions of one of the parties declared during the negotiations preceding the signing of a treaty, the decision must depend on the merits of the special case. If, for instance, the discrepancy was produced through a mere clerical error or by some other kind of mistake, it is obvious that the interpretation is necessary in accordance with the real intentions of the contracting parties."

Examining the treaty under consideration "in the light of attendant and surrounding circumstances" (*In re Ross, Petitioner*, 140 U. S. 453, l. c. 475), the following considerations are pertinent:

(1) The preamble to the treaty recites that the purpose of the treaty is "to improve the condition of the citizens and subjects of each of the respective countries in relation to the tenure and disposition of real and personal property situated or being within the territories

of the other," etc. There is no apparent reason why either of the contracting parties should desire to restrict the rights to be secured for their respective subjects because of the domicile or residence of such citizens. No considerations of policy would seem to require such restriction. In fact, it is hardly conceivable that a Mother Country would desire to discriminate against some of its subjects, by providing for restrictions applicable to subjects who happen to be domiciled within its colonies (perhaps in the interest of the Mother Country), when such restrictions do not apply, for instance, to subjects residing in a foreign country, and who perhaps are but slightly interested in the welfare of the Mother Country.

(2) On the other hand, Great Britain had many colonies and foreign possessions, and would naturally feel some delicacy about finally concluding a treaty which affected "real or personal property situated or being within the territories" of such colonies, and as a matter of policy, there were very good reasons for providing that the treaty should be inapplicable to real and personal property situated within the colony, until such colony had been consulted, and notice given or withheld accordingly.

(3) The United States had just concluded a Treaty of Peace with Spain (Treaty of Peace, concluded at Paris, December 10, 1898, II Malloy on Treaties, etc. p. 1690), by which it had for the first time acquired substantial territories beyond the seas. The last paragraph of Article IV is obviously so worded as to apply to

Cuba, as well as Porto Rico, the Philippine Islands and other territories "pertaining to or occupied and governed by the United States beyond the seas." These newly acquired responsibilities, made it important that this country should proceed cautiously, before granting to British subjects rights relating to "real and personal property situated" within those territories.

(4) In addition to all the foregoing, Great Britain had just announced its interpretation of the provision in the Japanese Treaty similar to Article IV, and our representatives presumably accepted that interpretation as applying to the British-American Treaty then being negotiated.

While the Solicitor General, in his brief, states that the construction placed upon Article IV of the Treaty by our State Department, is different from that placed upon it by Great Britain, it does not appear that the interpretation of the State Department has ever been brought to the attention of Great Britain, or that any steps have been taken which would lead Great Britain to conclude that the United States differed in its interpretation of the treaty from that announced by Great Britain at the time the treaty was negotiated. We submit that nothing but the utmost hardship, injustice and want of mutuality (which as we have elsewhere pointed out does not exist in the slightest degree) would justify the State Department in insisting upon an interpretation of Article IV of the Treaty in question, different from that which must have been known to the representatives

of this country who negotiated the Treaty of 1899, and from which interpretation so far as we are aware, this country has never publicly dissented.

In the light of all of the attendant circumstances, and especially in the light of the correspondence between Lord Salisbury and Sir E. Satow, above referred to, which we have reason to believe has not previously been brought to the attention of the Solicitor General, we respectfully submit that the position of the State Department cannot be upheld, and that the views previously announced by Great Britain should prevail.

II.

It appears from the language of the Treaty itself that the restrictions contained in Article IV were intended to be territorial only, and not personal.

It appears from the Preamble to the Treaty that the subject to be dealt with is "the tenure and disposition of real and personal property *situated or being in the territories of the other,*" etc. (our italics).

Article I of the Treaty in question, provides that:

"Where, on the death of any person holding real property (or property not personal), within the territories of one of the contracting parties, such real property would, by the laws of the land, pass to a citizen or subject of the other, *were he not disqualified by the laws of the country where such real property is situated,* such citizen or subject shall be allowed a term of three years in which to sell the same * * *," etc. (our italics).

It appears from the foregoing that the object of a treaty is to remove disqualifications existing "*where such real property is situated.*"

Article IV provides that:

"The stipulations of the present convention shall not be applicable *to any of the colonies or foreign possessions* of Her Britannic Majesty unless notice to that effect shall have been given, on behalf of any such colony or foreign possession * *," etc. (our italics).

We submit that it appears from the very terms of the treaty itself, that the limitations of Article IV were intended to be territorial only. It appears from the Preamble to the Treaty, that the subject matter thereof is real and personal property "situated or being in the territories of the other." Article I undertakes to remove a disqualification existing "by the laws of the country where such real property is situated," and Article IV provides that the removal of such disqualification "shall not be applicable to any of the colonies or foreign possessions of Her Britannic Majesty unless notice to that effect shall have been given * * *."

The very purpose of the treaty being to give to the subjects of each of the parties rights to real and personal property situated in the territories of the other, it naturally follows that any limitations upon that right would be limitations which were territorial and not personal.

Surely, in the light of the interpretation previously announced by Great Britain with respect to a similar

clause in the Japanese Treaty, if it had been the intention of our representatives that the limitations of Article IV should apply to subjects who were residents of the colonies, such representatives would have written into Article IV, words which would clearly express such intention. In other words, the provisions of Article IV would have been made to read somewhat as follows:

"The stipulations of the present convention shall not be applicable to *subjects residing in* any of the colonies or foreign possessions of Her Britannic Majesty."

The very fact that the words italicized or words of a similar import, were not included in Article IV would seem to indicate beyond any doubt, an intention that the limitations contained in Article IV should be territorial only.

The interpretation contended for by the State Department would, we submit, result in very great injustice and hardship.

For instance, under that interpretation a subject of Great Britain, residing in England, France, the United States, or any foreign country, would be entitled to the benefits of the Treaty, but if he happened to cross the border into Canada and become domiciled there, he would thereupon become disqualified. Likewise, if no notice were given by the United States on behalf of the Philippine Islands, a citizen of the United States would be entitled to the benefits of the treaty, if he resided in the United States or England, France or any foreign country, but if he should become domiciled in the Philip-

pine Islands, he would immediately be deprived of the benefits of the treaty.

Under the interpretation contended for by the State Department, the rights of subjects and citizens of the respective Contracting Parties, would become doubtful and uncertain, every time one of them crossed the border into one of the non-adhering colonies or foreign possessions of the Mother Country, and no substantial reason for such restrictions are apparent.

On the other hand, the interpretation placed upon the treaty by Great Britain leaves no doubt or uncertainty as to the rights of any one. Under that interpretation, *all* of the subjects and citizens of the two Contracting Parties, wherever domiciled, are entitled to the rights granted under the treaty. By Article IV, the only restriction is upon the application of the stipulations of the treaty to real and personal property situated in the colonies and foreign possessions of the two Contracting Parties, which restriction may be removed by notice of adhesion as to such colony or foreign possession within the time specified. It is natural and reasonable that the colonies and foreign possessions should be consulted before the treaty is made to apply to real and personal property situated within their boundaries. Article IV as construed by Great Britain is really not a restriction or limitation upon the rights stipulated for, but is merely a means provided for enlarging the scope of the treaty so as to make it apply to real and personal property situated in the colonies and foreign possessions of the two

Contracting Parties as well as in the Mother Country, upon giving notice as provided.

This interpretation is sensible. There is complete mutuality, and there is no uncertainty as to the rights acquired.

Furthermore, under the interpretation adopted by Great Britain, the wishes of the colonies or foreign possessions are to be consulted only with respect to the application of the treaty to real and personal property situated within the boundaries of such colony.

Under the interpretation contended for by the State Department, the colonies or foreign possessions of the Mother Country (whether Great Britain or the United States), by opposing adhesion to the treaty, could limit the rights of subjects of their Mother Country, who might then or thereafter be domiciled within the colony. It is inconceivable that either the United States or Great Britain intended that any of their colonies or foreign possessions should be consulted with respect to what rights they should procure by treaty for any of their citizens or subjects wherever domiciled.

A sovereign power has the right to represent all of its subjects wherever they may be domiciled, and to negotiate treaties securing to them rights in foreign countries, and no reason of policy is apparent why this right should, in the slightest degree, be delegated to any of its colonies or foreign possessions.

We submit that the very terms of Article I and of Article IV of the treaty clearly indicate that the limitations of Article IV were intended to be limitations as to territory only.

III.

The laws of Canada made it unnecessary that notice of adhesion to the treaty should be given in its behalf.

If our contention as to the proper interpretation of Article IV of the treaty is correct, then notice of adhesion on behalf of Canada would have had the effect merely, of extending the application of the stipulations of the treaty to real and personal property situated in Canada. In other words, the disability existing at common law with respect to the right of aliens to take by descent under the laws of Canada, would have been removed to the extent provided in the treaty, so far as citizens and subjects of the United States were concerned.

This common law disability is one which may be removed by treaty, or it may be removed by law enacted by the State, Province or country within which the property is situated.

Notice of adhesion to the treaty apparently has not been given on behalf of Canada, so as to remove the common law disability of citizens of the United States with respect to property situated in Canada, but the same end has been even more effectually accomplished by the enactment of laws both in Ontario, where Jane Kidd, the appellee, resides, as well as in Canada. The laws of Ontario provide (*Revised Statutes of Ontario, 1914, Vol. I, page 1187*):

"On and from the 23rd day of November, 1849, every alien shall be deemed to have had and shall hereafter have the same capacity to take by

gift, conveyance, descent, devise, or otherwise, and to hold, possess, enjoy, claim, recover, convey, devise, impart and transmit real estate in Ontario as a natural born or a naturalized subject of His Majesty."

(See Appendix to this Brief for a more complete reference to the laws of Ontario.)

It is provided in the Revised Statutes of Canada, 1906 (Vol. II, Chap. 77), among other things, as follows:

"Real and personal property of any description may be taken, acknowledged, held and disposed of by an alien in the same manner in all respects as by a natural born British subject."

This provision apparently became effective on July 4, 1883.

(See Appendix to this brief for a more complete reference to the Canadian laws.)

These laws clearly explain the reason why no notice of adhesion was given on behalf of Canada.

Obviously, the Canadian authorities assumed that the interpretation placed upon Article IV by the foreign office of Great Britain was the correct interpretation of that Article, and having granted to the citizens of the United States by its laws previously enacted, more generous treatment than would have been granted by notice of adhesion as provided by the Treaty of 1899, no notice of adhesion was deemed necessary. We submit that it would now seem most unjust, if, after the generous treatment accorded citizens of this country by Canada

and the Province of Ontario, long prior to the negotiation of the Treaty in question, this country should deny to citizens and subjects of Great Britain who happen to be domiciled in Canada, similar treatment with respect to real estate located within the United States, because of a narrow and restricted interpretation of the Treaty of 1899, which public documents plainly show was not intended at the time the Treaty was negotiated.

We again respectfully submit that the judgment of the trial court should be affirmed.

O. H. DEAN,
H. M. LANGWORTHY,
R. B. THOMSON,
R. D. WILLIAMS,
Solicitors for Appellee.

J. E. MADDEN,
W. D. McLEOD,
Of Counsel.

APPENDIX.**Official Correspondence Relating to
Japanese Treaty.**

I, Stephen Gaselee, C. B. E., Librarian and Keeper of the Papers of His Majesty's Foreign Office, do hereby certify that the documents hereto attached are true copies of despatches, dated respectively February 22, 1899, and October 19, 1899, addressed by the Marquis of Salisbury to Sir E. Satow, Her Majesty's Envoy Extraordinary, Minister Plenipotentiary, and Consul-General in Japan.

(Seal)

Stephen Gaselee.

Foreign Office

June 4, 1920.

I certify the above to be the signature of M^r Stephen Gaselee, Librarian and Keeper of the Papers of His Majesty's Foreign Office.

(Seal)

H. Goldes.

No. 52.

The Marquess of Salisbury to Sir E. Satow.

(No. 23)

Foreign Office, February 22, 1899.

Sir,

I have had under my consideration in consultation with the Law Officers of the Crown your despatch, No. 142, of the 6th September, respecting the status of In-

dian and Colonial subjects of Her Majesty residing in Japan, as affected by the Treaty of the 16th July, 1894.

Her Majesty's Government are of opinion that Article XIX of the Treaty has not the effect of limiting the rights of British subjects connected with non-adhering Colonies or possessions. The question as to who are British subjects for the purposes of the Treaty is one of British Law.

Many of the persons resident in the Colonies would be British subjects even if they had been born in a foreign country as being the children or grand-children of natural-born British subjects, and it is impossible to suppose that such persons lose the benefits of this Treaty owing to the fact that they have been born in a British Colony and not in a foreign country.

No test can be suggested for discrimination against persons connected with non-adhering Colonies or possessions. The inhabitants of such Colonies or possessions are generally, and not locally merely, British subjects. They enjoy the privileges of citizenship all over the Empire.

Her Majesty's Government are of opinion that the test of domicile could not be applied in practice and the test of residence which has also been suggested appears to be even more impracticable, as residence varies from time to time and it could not be said of any colonist who came to Japan that he was then resident in the Colony.

It must be recollected that British subjects inhabiting non-adhering Colonies and Dependencies are affected

by this Treaty, inasmuch as when it comes into force it puts an end to the earlier Treaties under which they enjoy a right to exterritoriality.

The fair meaning of the Treaty, in the opinion of Her Majesty's Government, is that all persons who by British Law are recognized as possessing the rights of British citizenship all over the world are entitled to the benefits of its stipulations, and this test includes the inhabitants, being British subjects, of all Colonies and Dependencies whether they adhere to the Treaty or not.

Her Majesty's Government are of opinion that Article XIX does not discriminate between different classes of British subjects, nor create a distinction unknown to British Law and almost impossible of definition, but that its effect is merely to provide that the privileges and obligations of the Treaty shall not ensure for the benefit of non-adhering Colonies and Dependencies. For instance, the produce or manufacture of a non-adhering Colony or Dependency, would not be entitled to the Tariff prescribed by the Treaty.

Should the occasion arise you should inform the Japanese Government of the construction which Her Majesty's Government place upon the Treaty as set forth in the above observations, pointing out the impossibility of the proposed distinction, and that the discrimination introduced by Article XIX is territorial merely and not personal.

I am, etc.

(Signed) Salisbury.

No. 184.

The Marquess of Salisbury to Sir E. Satow.

(No. 89)

Foreign Office, October 19, 1899.

Sir,

I have had under my consideration, in consultation with the Law Officers of the Crown, your despatch No. 133, Confidential, of the 27th July, relative to the question of the rights of Indian and Colonial subjects of Her Majesty to the protection of their industrial property in Japan, as affected by the Treaty between this country and Japan of the 16th July, 1894.

I am advised that British subjects, though residing in or domiciled in Colonies or possessions which have not adhered, are entitled to the benefits of Article XVII of the Treaty, and also of Article II of the International Convention for the Protection of Industrial Property, signed at Paris on the 20th March, 1883, which contains the following provision:

"Les sujets ou citoyens de chacun des Etats Contractants jouiront, dans tous les autres Etats de l'Union, en ce qui concerne les brevets d'invention, les dessins ou modeles industriels, les marques de fabrique ou de commerce et le nom commercial, des avantages que les lois respectives accorderont actuellement ou accorderont par la suite aux nationaux."

The right is conferred on those who are British subjects, and is not lost by their being resident or domiciled either in a foreign country or in a Colony which has not adhered.

The right under the Convention is also conferred by Article III on foreigners domiciled in one of the Contracting States. Of course, domicile in a non-adhering Colony would not be effectual for this purpose, as the test is, in this instance, local, not personal as in the case of British subjects. This distinction is also illustrated by Articles IV and VI of the Convention, which would not apply in the case of non-adhering Colonies.

I am, etc.

(Signed) Salisbury.

Extracts from Laws of Ontario.

Revised Statutes of Ontario, 1914. Vol. I. p. 1187.
Chapter 108.

An Act Respecting the Rights of Aliens in Relation
to Real Property.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as The Aliens Real Property Act. 10 Edw. VII, c. 49, s. 1.

2. On and from the 23rd day of November, 1849, every alien shall be deemed to have had and shall hereafter have the same capacity to take by gift, conveyance, descent, devise, or otherwise, and to hold, possess, enjoy, claim, recover, convey, devise, impart and transmit real estate in Ontario as a natural born or a naturalized subject of His Majesty. 10 Edw. VII, c. 49, s. 2.

3. The real estate in Ontario of an alien dying intestate shall descend and be transmitted as if the same

had been the real estate of a natural born or naturalized subject of His Majesty. 10 Edw. VII, c. 49, s. 3.

4. Nothing herein shall alter, impair or affect any right or title legally vested in or acquired by any person before the 23rd day of November, 1849. 10 Edw. VII, c. 49, s. 4.

Extracts from Laws of Canada.

Revised Statutes of Canada, 1906. Vol. II.
Chapter 77.

An Act Respecting Naturalization and Aliens.

Short Title.

1. This Act may be cited as the Naturalization Act.
R. S., Short title, c. 113, s. 1.

* * * * *

Rights of Property of Aliens.

4. Real and personal property of any description may be taken, acquired, held and disposed of by an alien in the same manner, in all respects, as by a natural-born British subject. R. S. c. 113, s. 3.

5. A title to real and personal property of any description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject. R. S., c. 113, s. 3.

6. Nothing in the two last preceding sections shall qualify an alien for any office, or for any municipal, parliamentary, or other franchise, or to be the owner of a British ship; nor shall anything therein entitle an alien to any right or privilege as a British subject, except

such rights and privileges in respect of property as are hereby expressly conferred upon him. R. S. c. 113, s. 3.

7. The provisions of the three last preceding sections shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the fourth day of July, one thousand eight hundred and eighty-three, or in pursuance of any devolution by law on the death of any person dying before the said date. R. S. c. 113. s. 3.

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

BARTHOLOMEW SULLIVAN, MARGARET Tholen, John Martin, et al., Appel- lants,	} No. 65.
v. JANE KIDD.	

*APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF KANSAS.*

BRIEF ON BEHALF OF THE UNITED STATES.

This case, involving rights claimed under a treaty between this Government and the Government of Great Britain, has been remanded to the docket for reargument, with directions that the attention of the Attorney General of the United States and the Attorney General of the State of Kansas be called to it.

Accepting this order as an invitation to present the views of the United States with respect to the treaty in question, the following brief is submitted:

STATEMENT OF THE CASE.

The laws of the State of Kansas make no provision for the inheritance by aliens of lands within that State. The question involved is whether a

subject of Great Britain residing in Canada is entitled to the limited rights of inheritance secured to British subjects by the treaty of March 2, 1899 (81 Stat., p. 1939). The court below sustained the rights claimed under the treaty.

THE TREATY.

The treaty in question, which is printed as an appendix to this brief, recites its object to be—

to improve the condition of the citizens and subjects of each of the respective countries in relation to the tenure and disposition of real and personal property situated or being within the territories of the other, as well as to authorize the representation of deceased persons by the consuls of their respective nations in the settlement of estates.

Article I provides that—

Where, on the death of any person holding real property (or property not personal), within the territories of one of the contracting parties, such real property would, by the laws of the land, pass to a citizen or subject of the other, were he not disqualified by the laws of the country where such real property is situated, such citizen or subject shall be allowed a term of three years in which to sell the same—

and shall have certain other rights.

Article II provides that citizens or subjects of each of the contracting parties shall have full power to dispose of their personal property within the territories of the other by testament, donation, or

otherwise, paying such duties only as the citizens or subjects of the country where the property lies shall be liable to pay in like cases.

Article IV is as follows:

The stipulations of the present convention shall not be applicable to any of the colonies or foreign possessions of Her Britannic Majesty unless notice to that effect shall have been given, on behalf of any such colony or foreign possession by Her Britannic Majesty's representative at Washington to the United States Secretary of State, within one year from the date of the exchange of the ratifications of the present convention.

It is understood that under the provisions of this article, Her Majesty can in the same manner give notice of adhesion on behalf of any British protectorate or sphere of influence, or on behalf of the Island of Cyprus, in virtue of the convention of the 4th of June, 1878, between Great Britain and Turkey.

The provisions of this convention shall extend and apply to any territory or territories pertaining to or occupied and governed by the United States beyond the seas, only upon notice to that effect being given by the Representative of the United States at London, by direction of the treaty making power of the United States.

Article V is:

In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of each of the high contracting parties shall in the dominions of the

other enjoy the rights which are or may be accorded to the citizens or subjects of the most favored nation.

Article VI, after providing for the length of time during which the treaty shall be in force, concludes as follows:

The United States or Her Britannic Majesty shall also have the right separately to terminate the present convention at any time on giving twelve months' notice to that effect in regard to any British colony, foreign possession, or dependency, as specified in Article IV, which may have acceded thereto.

No notice has been given making the treaty applicable to Canada.

OPPOSING VIEWS OF THE TREATY.

It is proper to state that the British Government and our State Department have not construed this treaty alike. The ruling of the court below is in accord with the British view. Under this construction it is held that the rights given by the treaty are secured to citizens or subjects of the contracting parties without regard to whether they reside in what may be called the home territory or in the colonies or foreign possessions of the contracting parties, and without regard to whether the colony or possession in which they happen to reside has been brought within the terms of the treaty by the giving of the required notice. The claim is that, in the absence of such a notice on behalf of a particular colony or foreign possession, the rights secured to

citizens or subjects do not extend to property situated in such colony or possession, but that the subjects or citizens of the contracting parties residing there have the same rights as other citizens or subjects with respect to property situated within the home territory of the contracting parties. No notice has been given bringing Canada within the terms of the treaty, and hence the contention is that, while an American citizen acquires no rights under the treaty with respect to property in Canada, a British subject in Canada does acquire these rights with respect to property in the United States. In the same way, of course, it is conceded that a British subject acquires no rights under the treaty to property in Hawaii, although an American citizen residing there does acquire these rights with respect to property situated in England.

The contention of our State Department, on the other hand, is that the limitations provided by Article IV apply both to the citizens or subjects to whom rights are secured and also to the property to which these rights apply. In other words, it is insisted that a subject of Great Britain residing in Canada acquires no rights under this treaty with respect to property in the United States unless Canada has by a proper notice been brought within the terms of the convention.

**A FAIR INTERPRETATION OF THE TREATY SUSTAINS THE
CONTENTION OF OUR STATE DEPARTMENT.**

When this treaty was entered into, Great Britain had throughout the world many colonies and foreign

possessions, and also exercised protectorates over considerable territory and many people. The United States also occupied and governed certain territory beyond the seas.

If the first three articles had been all the treaty, there can scarcely be any doubt that all citizens or subjects of the contracting parties, wherever residing, would have been within the terms of the treaty and would have been entitled to the rights secured with respect to property situated anywhere within the dominion or subject to the Government of either of the contracting parties. The question is, To what extent has the operation of the treaty been limited by Article IV? Does that article leave the description of the persons entitled to the rights secured unlimited and only place a limitation upon the property to which those rights shall attach? The language employed is comprehensive. It is that "the stipulations of the present Convention shall not be applicable to any of the colonies or foreign possessions of Her Britannic Majesty unless notice to that effect shall have been given on behalf of any such colony or foreign possession," and that "the provisions of this Convention shall extend and apply to any territory or territories pertaining to or occupied and governed by the United States beyond the seas only upon notice to that effect being given by the Representative of the United States at London, by direction of the treaty-making power of the United States." Manifestly, the purpose was that each contracting party should be able to acquire for its colonies or

foreign possessions, by giving this notice, some rights which these colonies or possessions would not otherwise have. If the construction adopted by the court below is correct, its subjects residing in these colonies or possessions would already have the right to inherit property in the same way that any other subject might inherit and without regard to whether they resided in a colony which had not been brought within the terms of the treaty. The giving of the notice, therefore, secured no additional rights. On the contrary, its effect would be simply to confer additional rights upon citizens or subjects of the other contracting party by permitting them to inherit property in such colony which they could not otherwise have inherited. It would seem, therefore, that the bringing of the colony within the terms of the treaty by notice would, so far as the interests of residents of that colony are concerned, be an idle ceremony. There could have been no object, in the first instance, in excluding such a colony from the provisions of the treaty unless the contracting party at that time was not willing to concede the rights secured by the treaty with respect to property in that colony. On the other hand, there could have been no object in the other agreeing that the colony might be brought within the terms of the treaty by notice unless the subjects or citizens of such contracting party would thereby secure rights which had been denied by the original treaty. Under this construction, a subject of Great Britain residing in Canada would be denied the rights secured to other subjects of Great Britain

with respect to property in the United States, for the very good reason that citizens of the United States were denied the same rights with respect to property in Canada.

When the treaty was made the parties, of course, had the power to make it applicable to all persons and all territory over which they, respectively, had jurisdiction. On the other hand, they had the right to exclude from its operations certain portions of their territory and, at the same time, to exclude such of its subjects or citizens as resided in the excluded territory. It would scarcely be held, however, that the one was excluded and the other included unless the language employed may not fairly bear any other construction. The language excluding the colonies or foreign possessions is not limited, but applies to all "the stipulations of the present Convention." All of these stipulations are to be extended to the colonies or possessions of each contracting party by a mere notice given by that party. A construction that would permit this notice to acquire for the party giving it rights without granting some reciprocal rights to the other party would do violence to the common sense of the parties entering into the convention. The language used does not require such a construction. On the contrary, the natural construction is that, until notice is given, the colonies or foreign possessions and their inhabitants are excluded from the operation of the treaty.

There are some other provisions of the treaty which strongly support this contention. Thus, it is pro-

vided that Great Britain may give notice of adhesion "on behalf of any British protectorate or sphere of influence, or on behalf of the Island of Cyprus." Presumably, the people over whom Great Britain exercises a mere protectorate are not British subjects and would not be within the provisions of Article I. Of course it was contemplated that something would be accomplished by this notice of adhesion. In the territory over which the protectorate is exercised there may be many British subjects residing. Since that territory, however, was not within the terms of Article I, British subjects residing there would be entitled under the treaty to all the rights of British subjects residing elsewhere than in colonies or foreign possessions as to which notice of adhesion had not been given. To bring these protectorates within the terms of the treaty would not be necessary, then, to acquire any rights for British subjects residing there. Nothing was to be accomplished by this provision unless it was to secure the rights of the treaty to people not British subjects, but under a British protectorate, upon the granting of reciprocal rights to citizens of the United States with respect to property within the territory under such protectorate. This provision, which is a part of Article IV, must, if it means anything, be held to apply to the persons as well as the property affected by the terms of the treaty. It thus throws some light upon the meaning of the other paragraphs of Article IV, which apply to colonies or foreign possessions.

Again, in Article VI, both parties reserve the right to terminate at any time, on 12 months' notice, the Convention as applied to any colony, foreign possession, or dependency. It is not conceivable that either party would have given the right to the other to terminate the treaty with respect to a particular colony unless the effect would be to cancel some reciprocal rights. In other words, the United States would scarcely be willing that Great Britain should cancel a part of a treaty which gave rights to its citizens unless the rights which it gave to the subjects of Great Britain residing in that colony should also be canceled.

It is respectfully submitted that the ruling of the court below was erroneous and should be reversed.

WILLIAM L. FRIERSON,
Solicitor General.

OCTOBER, 1920.

APPENDIX.

Convention between the United States of America and the United Kingdom of Great Britain and Ireland relating to the tenure and disposition of real and personal property. Signed at Washington, March 2, 1899; ratification advised by the Senate, March 22, 1900; ratified by the Queen, June 18, 1900; ratified by the President, July 16, 1900; ratifications exchanged, July 28, 1900; proclaimed, August 6, 1900.

WILLIAM McKINLEY,

PRESIDENT OF THE UNITED STATES OF AMERICA.

To all to whom these Presents shall come, Greeting:

Know Ye, that whereas a Convention between the United States of America and Great Britain, relating to the tenure and disposition of real and personal property, was concluded at Washington on the 2d of March, one thousand eight hundred and ninety-nine, the original of which Convention, being in the English language, is, as amended by the Senate of the United States, word for word as follows:

"The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, desiring to improve the condition of the citizens and subjects of each of the respective countries in relation to the tenure and disposition of real and personal property situated or being within the territories of the other, as well as to authorize the representation of deceased persons by the Consuls of their respective nations in the settlement of estates, have resolved to conclude a

convention for those purposes and have named as their Plenipotentiaries:

"The President of the United States of America, the Honorable John Hay, Secretary of State of the United States of America; and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honorable Sir Julian Pauncefote, Knight Grand Cross of the Orders of the Bath and of St. Michael and St. George, Ambassador Extraordinary and Plenipotentiary of Great Britain;

"Who, having exchanged their said full powers found in due and proper form, have agreed to and signed the following articles:

"ARTICLE I.

"Where, on the death of any person holding real property (or property not personal), within the territories of one of the Contracting Parties, such real property would, by the laws of the land, pass to a citizen or subject of the other, were he not disqualified by the laws of the country where such real property is situated, such citizen or subject shall be allowed a term of three years in which to sell the same, this term to be reasonably prolonged if circumstances render it necessary, and to withdraw the proceeds thereof, without restraint or interference, and exempt from any succession, probate or administrative duties or charges other than those which may be imposed in like cases upon the citizens or subjects of the country from which such proceeds may be drawn.

"ARTICLE II.

"The citizens or subjects of each of the Contracting Parties shall have full power to dispose of their personal property within the territories of the other,

by testament, donation, or otherwise; and their heirs, legatees, and donees, being citizens or subjects of the other Contracting Party, whether resident or non-resident, shall succeed to their said personal property, and may take possession thereof either by themselves or by others acting for them, and dispose of the same at their pleasure, paying such duties only as the citizens or subjects of the country where the property lies shall be liable to pay in like cases.

“ARTICLE III.

“In case of the death of any citizen of the United States of America in the United Kingdom of Great Britain and Ireland, or of any subject of Her Britannic Majesty in the United States, without having in the country of his decease any known heirs or testamentary executors by him appointed, the competent local authorities shall at once inform the nearest consular officer of the Nation to which the deceased person belonged of the circumstance, in order that the necessary information may be immediately forwarded to persons interested.

“The said consular officer shall have the right to appear personally or by delegate in all proceedings on behalf of the absent heirs or creditors, until they are otherwise represented.

“ARTICLE IV.

“The stipulations of the present Convention shall not be applicable to any of the Colonies or foreign possessions of Her Britannic Majesty unless notice to that effect shall have been given, on behalf of any such Colony or foreign possession by Her Britannic Majesty's Representative at Washington to the United States Secretary of State, within one year

from the date of the exchange of the ratifications of the present Convention.

"It is understood that under the provisions of this Article, Her Majesty can in the same manner give notice of adhesion on behalf of any British Protectorate or sphere of influence, or on behalf of the Island of Cyprus, in virtue of the Convention of the 4th of June, 1878, between Great Britain and Turkey.

"The provisions of this Convention shall extend and apply to any territory or territories pertaining to or occupied and governed by the United States beyond the seas, only upon notice to that effect being given by the Representative of the United States at London, by direction of the treaty making power of the United States.

"ARTICLE V.

"In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of each of the High Contracting Parties shall in the Dominions of the other enjoy the rights which are or may be accorded to the citizens or subjects of the most favored nation.

"ARTICLE VI.

"The present Convention shall come into effect ten days after the day upon which the ratifications are exchanged and shall remain in force for ten years after such exchange. In case neither of the High Contracting Parties shall have given notice to the other, twelve months before the expiration of the said period of ten years, of the intention to terminate the present Convention, it shall remain in force until the expiration of one year from the day on which

either of the High Contracting Parties shall have given such notice.

"The United States or Her Britannic Majesty shall also have the right separately to terminate the present Convention at any time on giving twelve months' notice to that effect in regard to any British Colony, foreign possession, or dependency, as specified in Article IV, which may have acceded thereto.

"ARTICLE VII.

"The present Convention shall be duly ratified by the President of the United States, by and with the approval of the Senate thereof, and by Her Britannic Majesty, and the ratifications shall be exchanged in London or in Washington.

"In faith whereof we, the respective Plenipotentiaries, have signed this Treaty and have hereunto affixed our seals.

"Done in duplicate at Washington, the second day of March, one thousand eight hundred and ninety-nine.

"JOHN HAY [SEAL.]

"JULIAN PAUNCEFOTE [SEAL.]"

And whereas the Convention has been duly ratified, as amended, on both parts, and the ratifications of the two Governments were exchanged in the city of Washington on the 28th day of July, one thousand nine hundred.

Now, therefore, be it known that I, William McKinley, President of the United States of America, have caused the said Convention, as amended, to be made public, to the end that the same and every

article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this sixth day of August in the year of Our Lord one thousand nine hundred and of the Independence of the United States, the one hundred and twenty-fifth.

[SEAL.]

WILLIAM MCKINLEY.

By the President:

ALVEY A. ADEE,

Acting Secretary of State.



SULLIVAN ET AL. v. KIDD.

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF KANSAS.**

No. 65. Argued April 27, 1900; restored to docket for oral argument May 17, 1900; reargued December 10, 1900.—Decided January 3, 1901.

1. In the absence of a controlling treaty, the capacity of an alien to inherit land within a State of the Union depends upon the law of that State. P. 435.
2. Treaties are to be interpreted upon the same principles as written contracts between individuals, all parts being considered with a view to giving a fair operation to the whole; and they are to be executed in the utmost good faith to effectuate the purposes of the high contracting parties. P. 439.
3. The Treaty of March 2, 1800, between Great Britain and the United States, grants the subjects of each party certain rights of inheritance respecting real property within the territories of the other, but declares (Art. IV) that its stipulations shall not be applicable to any of the colonies or foreign possessions of the British

Crown unless a notice to that effect shall have been given by Great Britain to the United States on behalf of such colony or possession, and that its provisions shall extend and apply to any territory pertaining to or occupied by the United States beyond the seas, only upon notice to that effect being given by the United States to Great Britain. *Held*, that the giving of such notice conditions the applicability of the treaty to a foreign possession, not merely in respect of the property there situate, but also in respect of the subjects and citizens there residing; so that, no notice having been given on behalf of Canada, a subject of Great Britain who was a citizen and resident of that Dominion acquired no right under the treaty to inherit land in the United States. P. 436.

4. The fact that Canada, as a self-governing dependency, in the exercise of her legislative power, has granted aliens the right to inherit, cannot affect the construction of the treaty. P. 440.
5. In the practice of this country, the "most favored nation" clause is held not to extend the rights acquired by treaties containing it because of reciprocal benefits expressly conferred in treaties with other nations in exchange for rights or privileges given to our Government. P. 441.
6. The "most favored nation" clause in the above cited treaty does not control its specific condition upon the right of citizens of a foreign possession to participate in its benefits. *Id.*
7. In construing the treaty little weight can be attached to a different construction placed by Great Britain on an earlier treaty with Japan but which was not made known to the representative who negotiated the treaty in question for this country. P. 443.
8. A construction placed upon a treaty and consistently adhered to by the Executive Department, should be given much weight by the courts. *Id.*

Reversed.

THE case is stated in the opinion.

Mr. Geo. F. Beatty and Mr. B. I. Lilowick, for appellants, submitted. *Mr. C. W. Burch and Mr. La Rue Royce* were also on the brief.

Mr. H. M. Langworthy, with whom *Mr. O. H. Dean, Mr. R. B. Thomsen, Mr. R. D. Williams, Mr. J. E. Madden and Mr. W. D. McLeod* were on the briefs, for appellee.

The Solicitor General, by special leave of court, submitted a brief on behalf of the United States.

MR. JUSTICE DAY delivered the opinion of the court.

This is an appeal from a decree of the United States District Court for the District of Kansas. It involves the construction of the Treaty between Great Britain and the United States of March 2, 1899, relating to the tenure and disposition of real and personal property. *Compilation of Treaties in Force 1904*, 375 (Malloy); 31 Stat. 1939.

The case arises from the following facts:

Peter Martin died at Osawatomie, Kansas, January 29, 1915, owning real estate situated in the County of Saline, Kansas. He left surviving him certain relatives, among others a sister Margaret Ingoldsbey, a resident of the township of Sheffield, County of Lennox-Addington, Province of Ontario, Canada. After the death of Peter Martin, and on July 28, 1916, Margaret Ingoldsbey died at her home in Canada, and by her last will and testament, duly probated, she named the appellee, Jane Kidd, her sole devisee and legatee. The real estate in Kansas has been sold in partition sale, and the question to be decided is whether Jane Kidd, thus holding by devise the interest of Margaret Ingoldsbey, is entitled to succeed to the undivided one-seventh of the estate of Peter Martin.

Primarily the devolution of the estate, it being situated in the State of Kansas, would be determined by the laws of that State. *Blythe v. Hinckley*, 180 U. S. 333, and previous cases in this court cited and quoted on page 341 et seq. Under the constitution and laws of Kansas Margaret Ingoldsbey, an alien, was incapable of inheriting, and the estate would pass to the brothers and sisters and their representatives who were native citizens. *Johansen v. Olson*, 92 Kansas, 819.

The right of Jane Kidd to succeed to the interest of Margaret Ingoldsby is said to arise from the fact that the latter was, although a citizen and resident of Canada, a British subject, and entitled to the succession because of the Treaty of March 2, 1899. The District Court sustained this contention. Pertinent provisions of the Treaty are:

“ARTICLE I.

“Where, on the death of any person holding real property (or property not personal), within the territories of one of the Contracting Parties, such real property would, by the laws of the land, pass to a citizen or subject of the other, were he not disqualified by the laws of the country where such real property is situated, such citizen or subject shall be allowed a term of three years in which to sell the same, this term to be reasonably prolonged if circumstances render it necessary, and to withdraw the proceeds thereof, without restraint or interference, and exempt from any succession, probate or administrative duties or charges other than those which may be imposed in like cases upon the citizens or subjects of the country from which such proceeds may be drawn.

“ARTICLE II.

“The citizens or subjects of each of the Contracting Parties shall have full power to dispose of their personal property within the territories of the other, by testament, donation, or otherwise; and their heirs, legatees, and donees, being citizens or subjects of the other Contracting Party, whether resident or non-resident, shall succeed to their said personal property, and may take possession thereof either by themselves or by others acting for them, and dispose of the same at their pleasure, paying such duties only as the citizens or subjects of the country where the property lies shall be liable to pay in like cases.

* * * * *

"ARTICLE IV.

"The stipulations of the present Convention shall not be applicable to any of the Colonies or foreign possessions of Her Britannic Majesty unless notice to that effect shall have been given, on behalf of any such Colony or foreign possession by Her Britannic Majesty's Representative at Washington to the United States Secretary of State, within one year from the date of the exchange of the ratifications of the present Convention.

"It is understood that under the provisions of this Article, Her Majesty can in the same manner give notice of adhesion on behalf of any British Protectorate or sphere of influence, or on behalf of the Island of Cyprus, in virtue of the Convention of the 4th of June, 1878, between Great Britain and Turkey.

"The provisions of this Convention shall extend and apply to any territory or territories pertaining to or occupied and governed by the United States beyond the seas, only upon notice to that effect being given by the Representative of the United States at London, by direction of the treaty making power of the United States.

"ARTICLE V.

"In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of each of the High Contracting Parties shall in the Dominions of the other enjoy the rights which are or may be accorded to the citizens or subjects of the most favored nation.

"ARTICLE VI.

"The present Convention shall come into effect ten days after the day upon which the ratifications are exchanged, and shall remain in force for ten years after such exchange. In case neither of the High Contracting Parties shall have given notice to the other, twelve months before

the expiration of the said period of ten years, of the intention to terminate the present Convention, it shall remain in force until the expiration of one year from the day on which either of the High Contracting Parties shall have given such notice.

"The United States or Her Britannic Majesty shall also have the right separately to terminate the present Convention at any time on giving twelve months' notice to that effect in regard to any British Colony, foreign possession, or dependency, as specified in Article IV, which may have acceded thereto."

The case was argued and submitted at the last term of this court. It was ordered reinstated with notice to the Attorneys General of the United States and of the State of Kansas. The case has been reargued. The Solicitor General presented the views of the State Department of the United States, and submitted a brief in behalf of the Government.

There are opposing views of the treaty, one taken by the British, and the other by the American Government, the view of the former being that British subjects, resident of Canada, or elsewhere, are entitled to inherit property in any State of the United States, and citizens of the United States are entitled to inherit in Great Britain and its possessions and colonies, provided as to the latter, that notice has been given under Article IV of the treaty of adhesion to the terms of the convention as to such colonies and possessions. The American contention is stated by the Solicitor General, and appears by a communication from the Secretary of State of October 2, 1920, sent in response to the invitation of the Solicitor General and now on the files of the Department of Justice. The Secretary of State sets forth that it is the view of this Government that British subjects, citizens and residents of Canada, do not inherit in the United States by virtue of the stipulations of the treaty, because as to the Domin-

ion of Canada no notice of adhesion to the same has been given as is required by the stipulations of Article IV. It hence appears that the one contention is that the notice required by Article IV has a territorial effect only, and when given brings such territory into the operative force of the treaty as to the property situated therein; the other, that, as to subjects and citizens, the notice is required to bring residents and property within the operative effect of the treaty.

Applied to the concrete case, the American contention is that Margaret Ingoldsby was not entitled to inherit in Kansas by the terms of this treaty because notice of adherence for the Dominion of Canada was not given. The communication of the State Department to the Solicitor General shows that the American Government is ready, and has expressed its willingness to take up the matter of extending the treaty provisions to the Dominion of Canada, notwithstanding the fact that the stipulated time for notice has expired.

Writers of authority agree that treaties are to be interpreted upon the principles which govern the interpretation of contracts in writing between individuals, and are to be executed in the utmost good faith, with a view to making effective the purposes of the high contracting parties; that all parts of a treaty are to receive a reasonable construction with a view to giving a fair operation to the whole. Moore, *International Law Digest*, vol. 5, 249. At the time of the negotiation of the treaty Great Britain had numerous colonies and possessions, and the United States had recently acquired certain islands beyond the seas. Concerning these the contracting parties made the stipulations contained in Article IV, adding the right to give like notice in behalf of any British protectorate, or sphere of influence, or on behalf of the Island of Cyprus by virtue of the Convention of June 4, 1878, between Great Britain and Turkey. As to the islands beyond

the seas occupied or governed by the United States, they were to come within the terms of the treaty only upon notice to that effect by direction of the treaty-making power of the United States.

If the contention of the appellee be correct, it necessarily follows that as to British possessions, the inhabitants thereof being British subjects, had nothing to gain by giving notice which Article IV specifically required, for as to them their rights had been secured by Articles I and II of the treaty. Applying this construction to the instant case, Canadians while residents of the Dominion, and citizens of a self-regulating and self-governing community, acquired by virtue of this treaty as British subjects the right to inherit in every State of the American Union regardless of local laws; this while citizens of the United States acquired no corresponding right to inherit in the Dominion of Canada until notice be given; a matter entirely beyond the control of American authority. The American right to inherit in Canada became a matter of grace on the part of the other contracting nation when it saw fit to grant it by signifying its adhesion to the treaty. Such construction is inconsistent with the general purpose and object of such conventions to secure equality in exchange of privileges and reciprocity in rights granted and secured. *Geofroy v. Riggs*, 133 U. S. 258, 271.

The fact that Canada, as a self-governing dependency, in the exercise of the legislative power which is hers, has seen fit to give aliens the right to inherit, adds nothing to the argument in favor of the appellee. The Dominion of Canada has not the treaty-making power. Whatever the Dominion may see fit to do in the exercise of its own legislative authority cannot affect the right of a State of the American Union to determine for herself whether aliens shall inherit property within her borders. The construction insisted upon by the United States makes for the exchange of reciprocal rights under the provisions

of the treaty, and when the required notice is given, British subjects resident of Canada would have property rights in the United States similar to those accorded citizens of the United States in Canada. That notice was deemed essential to the security of rights of British subjects, resident of the colonies, is shown by the practice which has followed the making of the Supplementary Convention of 1902 (Treaties in Force 1904, 377; 32 Stat., p. 1914) extending for twelve months from July 28, 1901, the time fixed in Article IV of the Treaty of March 2, 1899, for the notification of accession to that Convention by British colonies or foreign possessions. In a note to this treaty, published in Treaties in Force 1904, *supra*, it appears that most of the British colonies and possessions have given notice of adhesion to the Treaty of 1899.

The significance of Article VI is important. In this article provision is made for the right of the United States or the British Government to terminate separately the Convention by twelve months' notice to that effect in regard to any British colony, foreign possession or dependency, as specified in Article IV, which may have acceded to the Convention. This article lends strong support to the argument that only colonies or possessions which accede to the Convention are to have the benefit thereof; such rights, recognized as acquired by accession, being subject to termination by the withdrawal provision of Article VI.

Nor are we impressed with the argument that Canadian citizens, being also British subjects, are entitled to inherit in Kansas by virtue of the most favored nation clause. That clause has been held in the practice of this country to be one not extending rights acquired by treaties containing it because of reciprocal benefits expressly conferred in conventions with other nations in exchange for rights or privileges given to this Government. This clause cannot overcome the specific provisions of Article

IV making adhesion to the treaty necessary in order to bring citizens and property of colonies and possessions within the benefits of the treaty.

We are unable to see that the construction of this treaty is aided by the argument of counsel in the supplemental brief of the appellee that Lord Salisbury for the British Government insisted upon the construction which they contend for in relation to a similar convention with Japan. We find nothing in the archives of the Department of State to show that this insistence was brought forward in the course of negotiations or in any manner came to the attention of the American Representative, Mr. Hay, who negotiated this treaty with Sir Julian Pauncefote, the British Representative.

The American Government upon a message from the President for the purpose of securing the consent of the Senate, as we learn from public documents on file in the State Department, has with the consent of the Senate extended the provisions of the Convention of 1899 to Porto Rico and has so notified the British Government. We are advised by the letter of the Secretary of State of October 2, 1920 (on file in the Department of Justice), that this Government is ready to take up with the British Government the matter of extension of the treaty provisions to Hawaii and the Dominion of Canada.

While the question of the construction of treaties is judicial in its nature, and courts when called upon to act should be careful to see that international engagements are faithfully kept and observed, the construction placed upon the treaty before us and consistently adhered to by the Executive Department of the Government, charged with the supervision of our foreign relations, should be given much weight. *Charlton v. Kelly*, 229 U. S. 447, 468. See also *Castro v. De Uriarte*, 16 Fed. Rep. 93, 98 (opinion by Judge Addison Brown).

Taking the view which we have here expressed of the

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real purpose of the treaty as evidenced by its terms, which is strengthened by the practices of both governments in pursuance of it, we reach the conclusion that for lack of notice of the adhesion of Canada to the terms of the treaty, the law of Kansas was not superseded in favor of British subjects resident in Canada, and it determined the right of aliens to inherit lands in that State.

Reversed.